United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7207

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P/S

United States Court of Appeals

For the Second Circuit

Docket No. 76-7207

PRUDENTIAL OIL CORPORATION,

Plaintiff-Appellee,

vs.

PHILLIPS PETROLEUM COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

(67 Civ. 3748 (C.L.B.))

JOINT APPENDIX

Volume IV—Trial Transcript, 1136-1575

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PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY

January 15, 1976

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(Trial resumed.)

(In open court - jury present.)

THE COURT: Good morning members of the jury.

At this time, before we continue, I would like to say to all of you that I appreciate the fact that you come here on time, and this morning I was late. It was unavoidable on my part. Certainly no intention to inconvenience anybody and I do appreicate the fact that all of you have been so cooperative in coming here on time.

All right, will Mr. Rosenthal resume the stand.

L A W R E N C E M. R O S E N T H A L, resumed.

THE COURT: Mr. Urowsky, you may continue your voir dire.

VOIR DIRE EXAMINATION (Continued)

BY MR. UROWSKY:

Q Mr. Rosenthal, how many financings with major petrochemical projects was your firm, L. M. Rosenthal, responsible for managing?

A None.

Q Mr. Rosenthal, do you have any experience working

in the petrochemical business?

A I was a director for many years of a company called Alcolac Chemical Company, which is a manufacturer of surfactants and using chemical feedstocks as a raw material.

Q What were your responsibilities as a director?

A Those normally of a director, to be aware of the company's business and to vote on decisions affecting future decisions of the company, plant expansions, financings, etc.

Q Were you engaged in day to day management functions for that company?

A No, I was not.

Q Do you have any technical expertise in the are of petrochemical production or in the chemistry of petrochemical manufacture?

A No, I do not.

Q Do you have any expertise in the area of petrochemical plant design?

A No, I do not.

Q Are you familiar with the economic factors which affect the success or failure of a petrochemical operation during the period 1961 to '68?

A That is a hard question to answer, Mr. Urowsky.

Because I certainly am familiar with the fact that during that period the United States government had imposed an oil import quota; that there was a substantial price difference between imported oil and domestic, so that if one had an oil import quota you immeidately had a price advantage. That's a broad financial fact.

I am certainly not familiar with any specifics as to operating details of the petrochemical plant because I'm not an expert either in petrochemicals or chemistry.

Q Apart from the advantage which a plant possessing a quota to import foreign oil would enjoy, are you aware of any other factors which would be significant in determining --

MR. FARRELL: Your Honor -- go ahead, finish your question.

Q Are you aware of any other factors which you would describe as significant in affecting the success or failure of a petrochemical operation during the years 1961 through 1968?

MR. FARRELL: Your Honor, I object. This is really getting into something that should be covered on cross.

THE COURT: I will sustain the objection, but the same question may be asked on cross examination.

MR. FARRELL: Precisely, your Honor.

MR. UROWSKY: I have no further questions for this witness.

THE COURT: I will permit the witness to testify. The witness' qualifications and experience have been made known to the jury, and if the witness expresses any opinion, the jury will weigh his opinion in light of his qualifications and experience.

DIRECT EXAMINATION

BY MR. FARRELL CONTINUED:

Q Mr. Rosenthal, in preparing to testify today, did you read certain documents?

A Yes, I did.

Q Now, I will show you documents and ask you if you have familiarized yourself with them before testifying today.

To save time, I will bring them all up at once.

Mr. Rosenthal, did you review Plaintiff's Exhibit 215?

A Is this Prudential's brochure?

Q Yes.

A Yes.

Q Mr. Rosenthal, did you review Exhibit J-45?

A This is the Phillips one?

Q Of January '64.

A Yes.

Q Did you review Exhibit J-85, which is the agreement between Phillips Petroleum Company, Puerto Rican Industrial Development Company and the Economic Development Administration?

A Yes, I did.

Q Did you review Joint Exhibit 50, which is entitled a proposal to Mr. Rafael Durand from Stanley Learned regarding a core chemical industry for Puerto Rico?

A If this is the one described as the final Phillips one, yes.

Yes, I did.

Q Did you review Exhibit J-70 which is an agreement dated May 27, 1965 signed by Mr. Durand the Administrator of EDA and Mr. Learned, President of Phillips and approved by the Governor of the Commonwealth of Puerto Rico?

A Yes.

Q Did you review Defendant's Exhibit 198 which is the minutes of a conference on Wednesday, March 10, 1965, at the Department of Interior?

A Yes, sir.

Q Did you review Exhibit D-199 which is the official report of the proceedings before the United States Department of Interior on March 16, 1965?

A Yes, I did.

Q Did you review J-53-E which is the testimony of W.W. Keeler, an extract of that testimony, before the Department of the Interior on July 31, 1964?

A Yes, I did.

Q Did you review Joint Exhibit 85 --

A I think it is the same as this one.

Q It is another copy, I am sorry.

I meant Plaintiff's Exhibit 213 which is a brochure entitled Puerto Rico Petrochemical Industries, Inc.?

A Yes, I did.

Q Exhibit J-37 which is a letter dated June 6, 1962 from W.C. Hewitt of Phillips Petroleum Company to Bruce K. Brown?

A Yes, I did.

Q Did you review Defendant's Exhibit 205 for identification which is a memorandum of April 13, 1965 from Mr. Kron to Mr. Head, with copies to certain others and attaching thereto several pages of tables?

A Yes, I did.

Q Did you review Joint Exhibit 33 which is the memorandum of a conference with Cordell Moore, Oil Import Administrator, on May 9, 1962, with Mr. Snediker, an assistant to Mr. Moore, Mr. Chapman and Mr. Brown?

A Yes.

Q Did you review Defendant's Exhibit 207 for identification, which is a letter dated April 22, 1965 from Mr. Waldby of Phillips to Mr. Douce, chairman of the operating committee of Phillips?

A Yes.

Q Mr. Rosenthal, did you also review Plaintiff's Exhibit 230 which is the annual reports of Phillips Puerto Rico Core from 1967 through 1972?

A Yes, I did.

Q Mr. Rosenthal, was there anything else you reviewed in preparing to testify today?

A Yes. After reviewing this material I sought to see if I could find any situations which I felt were relatively analogous to the present question and in that case I reviewed the initial concept and financing of that concept of Commonwealth Oil Refining Company, Inc. and also the proposed financing of Commerce Oil Refining Corporation.

Q Was there anything else, Mr. Rosenthal?

A Not specifically in terms of documents, Mr. Farrell.

Q Having reviewed that material are you familiar with the concepts of Messrs. Shippee, Willey and Young as stated in Plaintiff's Exhibit 215?

A If it is the brown bound, yes, I am. I'm sorry I don't know them by number, Mr. Farrell.

Q Can you tell me what those concepts are?

A Basically the concepts in the brochure as I understand them are, one, that in order to get the Department of the Interior to grant an oil import quota license one didn't need a back-to-back commitment, an existing commitment for a chemical plant at the very beginning.

That so long as you created or designed a chemical plant which was conceived to manufacture a high degree of petrochemicals as opposed to fuels and so long as you committed those petrochemicals or that petrochemical output for the use of other potential locaters of plants on the Island of Puerto Rico, and if you further went out and solicited such people to use those feedstocks, that then you would probably be able to succeed in getting the petrochemical plant and the quota -- pardon me, the quota which was essentially to the petrochemical plant.

Q Mr. Rosenthal, assuming that you have correctly stated the concepts and assuming that the documents which you have reviewed indicate that Phillips utilized those concepts in applying for an oil import allocation, do you have an opinion as to the worth or value of those concepts?

A Yes, I do.

Q How did you reach that opinion, Mr. Rosenthal?

A By two separate means.

Q Will you describe them one at a time?

A All right.

May I refer, your Honor, to my copies of these because I have them marked up?

THE COURT: Anything you refer to you have to

state the number of it for the record.

THE WITNESS: It is 230.

MR. UROWSKY: Objection. I think we will object at this point to any testimony by the witness with regard to the value of the concepts in a petrochemical industry.

THE COURT: Are the grounds of the objection any differently than we discussed so far?

MR. UROWSKY: No, sir.

THE COURT: I will overrule the objection.

I will instruct the jury at this time an opinion of an expert witness is not bdinging upon you. It is evidence like all other evidence in the case which is to be weighed and considered by you and I will instruct you later at the close of the case as to those considerations which affect particularly consideration by the jury of an opinion of an expert.

MR. FARRELL: Mr. Rosenthal I think misspoke. Exhibit 230 are the financial statements. He wanted to use his own copies. I think I better mark them since he will be looking at them.

THE COURT: They may be marked for identification.

(P)aintiff's Exhibit 234 was marked for

identification.)

Q The question was, Mr. Rosenthal, will you describe one at a time the methods you used in reaching your valuation?

A It is always very hard, Mr. Farrell, to designate specific value for a concept which then leads to the establishment of a concrete entity.

So in addition to my experience, I looked as I testified earlier, at the initial allocation of equity in the Commerce and Commonwealth.

In Commonwealth the initial allocation of equity to the collective promotional group was 43 per cent of the equity and, in Commerce, the initial allocation of equity to the promotional group as a whole was 33 per cent.

In the brochure which Prudential supplied to Phillips --

Q Is that 215?

A Yes, this brown one. I will try to refer by numbers.

Q You have to open the cover, unfortunately.

A Yes, it is 215.

On page --

Q The pages are not numbered. You will have to read the heading.

BEST COPY AVAILABLE

A There is a page in here, while I am seeking it, which clearly stated that the promoters or the promotional group which was Prudential by definition, is anticipating receiving ultimately 4 million out of 15 million shares or 27 per cent of the refinery which would result.

Clearly, no matter what conclsion I came to as a result of examining Commonwealth, Commerce or any other relevant material, one could never find somebody was entitled to more than they were asking and here initially they show themselves as being the beneficiaries of 27 per cent.

After the valuation of that plus my other experience in situations where you are trying to allocate equity among concepts, money, people who had certain skills, I came to the conclusion that a fair allocation to the group which developed the concept, which led to the granting of the quota, would have been 25 per cent of the equity of the project.

(Continued on next page.)

Q Now, Mr. Rosenthal, did you also have a second method or are you finished?

A No, I wasn't finished, Mr. Farrell.

You asked me my coming to value. I have to explain how I got there. Then to try and decide what that 25 percent would have been worth, because it is obvious that Phillips didn't give Prudential, et al, 25 percent, I took the reported earnings of Phillips Puerto Rico Core, Inc., for the first three years of its full operations, right after the start up appeared.

Q Why did you choose three years?

A. So that it would give me a meaningful average of the first three years in operations. I would normally pick three. There is no magic to it. I could have extended it to five. I normally use three years, when I do things similar to this.

In 1969 the plant earned, as per reports, $9,809,838. In 1970, it earned $12,841,385. In 1971 it earned $12,467,091.

The total of those three was $35,058,014. Divide that by three and I got an average of $11,686,000.

I then took a multiple of ten times those earnings. It is frequent, as all common stocks are typically expressed in price earnings ratics, you also

compare them to book values and other things, to use multiples, and I chose the 10 in light of a whole variety of facts, one of which was that you were limiting, you are operating under an oil import quota which although had some language as to possibility of renewal, was not guaranteed, there was an obligation to keep the money in the Commonwealth of Puerto Rico, there was an obligation to re-invest $55,000,000 of it in other chemical plants, and I came up with an aggregate value of $116,869,046.70, and I didn't mean to refine it down that low, but I'm showing you how I arrived at this mathematically.

25 percent of that, $29,215,000; $11,000,068. Then I arbitrarily cut that in half. And I arbitrarily cut that in half for specific reasons:

Number one, under all circumstances Phillips would have been in control of the plant. Whatever interest they had given the conceptualizers, whether it had been 25 percent or 30 percent or whatever, there is no question in my mind that under any normal business dealings Phillips would have maintained absolute control. That creates a lesser value for the minority interest. And so I chop it in half and I came out with a mathematical computation of $14,607,505.84. And that was one way I went at it.

Q That is your opinion of the value of these

concepts as calculated by what you called the first method?

A By the first method I used.

Q Thank you.

Now, will you tell us the second method?

A Then I took another approach. It is clear from the facts, as I have examined them, that Phillips did not seek to have Prudential as a partner in the project. And therefore I considered what might have occurred if at the tim the plant was actually being created Phillips had sat down with the Prudential group and said "We don't want you as partners."

Now, let's come up with a fair value for your concept, and let's part ways and let us go on and build our petrochemical plant and do everything else we want with it.

And Mr. Walker testified yesterday, and had he not, I would have had to go to somebody like Mr. Walker, who was an expert in testifying as to values -- Mr. Walker testified yesterday that the value in excess of the bricks and mortar, of the plant as initially established, principally attributable to the concept and the getting of the quota, was $27,000,000, and I arbitrarily cut that in half because clearly Phillips was making a contribution to this; without Phillips it wouldn't have happened. They are entitled to half of it. The conceptualizers for giving

Phillips the idea and letting them have the plant and keep it are entitled to the other half and by that method, I came up with $13,500,000 and the two methods and the values were close enough so in my own mind I was satisfied that they were reasonable as to the proper allocation of values.

MR. FARRELL: That's all I have, your Honor.

THE COURT: You may cross examine, Mr. Urowsky.

CROSS EXAMINATION

BY MR. UROWSKY:

Q Mr. Rosenthal, is it fair to say that the value to be attributed to an idea or a concept which is possessed by someone is not greater than the value which he himself puts on it and asks for it?

A I think I already said that, Mr. Urowsky, in saying that in no way could I have found found that Prudential was entitled to more than the 27 percent they asked for in their own brochure.

Q And you would value that 27 percent, if I understand your first method, at approximately $29,000,000 or actually half of that, I guess, $14,000,000?

A No, Mr. Urowsky. I used 25 percent. 27 percent was what they were asking, and I said I wouldn't go up to the numbers used in either Commonwealth or Commerce, even

though they were higher, because Prudential itself had said 27 percent in there.

Q Right, and when you translated that into a dollar figure, it was $14,000,000?

A Correct.

Q Are you aware, Mr. Rosenthal, that in 1965 Mr. Shippee, under oath, stated that the value of his efforts and his concepts in promoting this project were worth one and a half million dollars?

A No, I am not.

MR. FARRELL: I object to that, your Honor.

THE COURT: I will overrule the objection.

He said Mr. Shippee, didn't he?

MR. FARRELL: But it misstates his testimony.

THE COURT: Well, the jury will recall the testimony. And you may develop it further on redirect examination. I think the question was asked in terms of Mr. Shippee, wasn't it?

MR. UROWSKY: Yes, that's right, your Honor.

THE COURT: All right.

Q Mr. Rosenthal, are you familiar with the concepts of Messrs. Shippee, Willey and Young, with respect to this proposed petrochemical facility?

A I think I just said, Mr. Urowsky, I am familiar

with them as I have studied them, as they are contained in the documents I have just said I have reviewed.

Q As you understand that concept, is it the concept of a petrochemical refinery or is it the concept of a petroleum refinery?

A As I understand the concept, Mr. Urowsky, it is neither. The concept was, during the period we are talking about, the granting of an oil import quota allocation was of great value. The question was, how did one get it?

Whether it were Phillips I think or Esso or Texaco or even groups who had no experience, if you could have gotten an allocation --

Q What I'm asking --

A Pardon me, I'm trying to answer your question, Mr. Urowsky; -- of 50,000 barrels a day, there were profits to be made, and the concepts that were contained in the Prudential proposal were concepts which would allow the Puerto Rican government, through EDA, to go together with the promotor conceptualizer to the Department of Interior and obtain a satisfactory result in the granting of the quota.

Q But did the concept as it existed or was alleged to have existed in 1962 and 1963, involve the

construction of a petroleum refinery, of, for example, the kind that Commonwealth was, or was the concept the concept for the creation of a petrochemical facility?

A Mr. Urowsky, I've already testified that I am not an expert on petrochemical - petroleum refineries. As I understand it, the difference was that this particular plant that they were talking about was to be more flexible in terms of its ability to generate petrochemical output as opposed to fuel output.

Q Do I understand you to state that flexibility in the refinery was part of the concept?

A Yes, you do.

Q Can you explain to me what it means for a refinery to be flexible?

A Mr. Urowsky, again, I have to go back. YOu have asked me a number of question, whether I am an expert.

THE COURT: Please don't argue with the examiner.

THE WITNESS: I'm sorry, your Honor.

THE COURT: If you can explain it, explain it. If you cannot, you may say to him that you cannot.

A I cannot technically explain what it means to be flexible.

Q Do you know whether it is technically feasible

to construct a flexible refinery.

A I believe it to be but again I'm not an expert in the area.

Q What is the basis for your belief that it is possible and feasible to construct a flexible refinery?

A Some of the testimony I heard yesterday and also having reviewed some of the documents prepared in the proposals by Universal Oil Products, who are experts, as I understand it, experts in design of refineries, etc.

Q Would the degree to which a refinery is flexible be affected or determined by the quality of the crude oil that was used?

A I have no idea.

Q Would it be the flexibility of the refinery, if it is feasible to construct such a facility, be affected or determined by the fractionating process that was used?

A I have no idea.

Q Do you know whether there are established techniques in the industry for effecting greater flexibility in the refining operation of a facility, or a refining facility?

A Only by hearsay. I have no expertise on that matter.

Q And do you know whether there were existing

plants in 1962 and 1963 designed for the flexible production of petrochemicals and gasoline?

A No, I do not.

Q Now, Mr. Rosenthal, is it your understanding that the concept or the concepts of Messrs. Shippee, Willey and Young included the idea that the refinery, the core refinery built had to sell its products to any chemical company locating in Puerto Rico even if the core refinery sustained lossess in connection with such sales?

A No.

Q Your understanding that that is not part of the concept?

A I think, Mr. Urowsky -- may I refer to a document, your Honor?

THE COURT: If you do, you will have to state for the record what you're looking at.

THE WITNESS: I will. There is a sentence in here talking about a quasi-public utility, and I suspect that that was what Mr. Urowsky was referring to.

THE COURT: What document number are you looking at?

THE WITNESS: I'm sorry, your HOnor. This is Plaintiff's 215, the Prudential submission, as I understand it, Prudential submission to Phillips.

Mr. Marks or somebody, if you could be helpful to me in finding it quicker --

THE COURT: No, I can't have this.

Frame another question. This is cross examination. Go on to another question.

THE WITNESS: I'm sorry.

THE COURT: Or reframe the same question so that it won't require him to take a lot of time looking at a document. Let him identify it from his memory.

Q Mr. Rosenthal, is it your understanding that the concept or concepts of Messrs. Shippee, Willey and Young with respect to a petrochemical refinery included the idea that the refinery, the core facility, would be required to sell petrochemical feedstocks to satellite chemical companies locating in Puerto Rico irrespective of whether the core facility could make any profit on those transactions?

A It was my understanding that the core plant would have a responsibility to the Puerto Rican government or to people of Puerto Rico to make available, to the best of its ability, certain feedstocks to promote further chemical industry.

Even if those were not necessarily done at normal margins.

Q Would it also be required to make those sales even if it sustained losses as a result of those operations? Was that part of the concept?

A Mr. Urowsky, I was looking -- there is some ambiguous langauge in there, and I was looking for the language and it was my interpretation of that, as I recall from reviewing it, that the obligation would be to provide the feedstocks at reasonable costs even if not highly profitable.

I did not interpret it to mean that they would have to take a loss on the supplying of those feedstocks.

Q Would it surprise you if you learned that that was part of the concept?

MR. FARRELL: I object to the form of the question.

THE COURT: If the witness doesn't understand the question, he may say so. The "that" that is contained in the question --

THE WITNESS: Not particularly.

THE COURT: Do you understand the question?

THE WITNESS: Yes, I do, your Honor.

THE COURT: All right.

A That was my answer. No, it would not surprise me unduly.

Q Mr. Rosenthal, did the concept, as you understand it, concept of Messrs. Shippee, Willey and Young, also include the idea that the government of Puerto Rico would make good any losses sustained by the facility arising out of the production of petrochemicals?

A No.

Q Mr. Rosenthal, were you present in this courtroom during Mr. Shippee's examination?

A No, I was not.

Q Have you had occasion to read the transcript of Mr. Shippee's examination?

A No, I have not.

THE COURT: Have you read any of the testimony in this case?

THE WITNESS: The one thing I have read, your Honor, was my own testimony before you yesterday.

Q So you are unaware that Mr. Shippee testified in this proceeding on direct examination --

MR. FARRELL: Your Honor, I would object and I would interrupt that because I think that is unfair.

THE COURT: The witness has said that he did not read any of Mr. Shippee's testimony. We all know he wasn't present here. So accordingly, it would follow that he wouldn't be aware of what he testified to.

MR. FARRELL: That's right, your Honor.

THE COURT: I will sustain the objection.

Did Mr. Shippee or anybody else tell you at any time the substance of what his testimony had been?

THE WITNESS: No, your Honor.

THE COURT: Anybody, including the lawyers?

THE WITNESS: No, your Honor.

THE COURT: All right.

Q Mr. Rosenthal, did you understand that a right of first refusal was a part of this concept?

A I understood it was an inherent part of this concept, that the raw materials for subsequent chemical plants would be made available to any chemical industry that wanted to locate on the Island and utilize them.

That can be accomplished in a whole number of ways. Right of first refusal, they could mandate storage of certain of them -- there is a whole bunch of ways.

I understood the concept clearly, the only reason for granting the import quota allocation was to have those feedstocks available for the creation of more chemicals, commerce and more jobs on the Island of Puerto Rico.

Q But did you understand specifically that that was to be accomplished under the concept through a right of first refusal approach?

A I had no specific understanding as to what the final mechanism would be for accomplishing the goal.

Q Have you been told by anyone or learned from reviewing the documents which you have examined whether a first refusal approach was at least considered as one mechanism?

A Well, in the final agrement, Mr. Urowsky,

between Phillips and EDA there is contained a right of first refusal or if not available an obligation on Phillips' part to retransport the feedstocks to somebody who wanted it.

Q Do you know whether it was part of the proposal which was presented by Messrs. Shippee, Willey and Young?

A In that language per se it was not but it was contained in the concept.

Q Mr. Rosenthal, does the merit of a concept or idea affect its value?

THE COURT: Is that a difficult question?

THE WITNESS: Yes, it is for this reason:

I have been involved in people trying to cause financing or a certain concept to come into reality. Many of them have merit but fail of accomplishment.

So that you can only focus on what the merit is when you achieve, come to achievement.

I have seen some meritorious ones, I considered meritorious, it is a value judgment, never succeed and others succeed and that is why I was hesitant as to exactly how to answer Mr. Urowsky's question.

Q But merit has some role in determining value of a concept, doesn't it?

A Not to me, Mr. Urowsky. To me what happened is whether or not it finally achieves accomplishment.

THE COURT: Can an unmeritorious idea achieve accomplishment?

THE WITNESS: Sadly I believe they have in our society.

Q Is it possible apart from specific circumstances in which an idea is realized, if it is realized, to state factors which affect its value?

THE COURT: You understand he is asking you in reference to commercial and mercantile ideas, not talking about ideas in gross.

A I appreciate that.

THE COURT: Matters of business ideas.

Can you answer that last question?

THE WITNESS: If I understand it, you are asking me are there value differences or weights between the quality of ideas or through uniqueness, et cetera?

Q That is right.

A I would answer that there are but I would like to qualify my answer if I may.

To the extent that those values have come out in specific negotiations at the time. Different people respond differently to different ideas and I have been

involved in the financing of a whole bunch of concepts or ideas and sometimes I have been stunned at the values that some of the parties to the meeting, particularly people putting up money, are willing to assign to the concept so you can't have a constant level. It is a matter of what comes out of a given negotiation among parties and how much one is disposed at that moment with respect to the concept.

Q These matters are generally the result of negotiations and reactions of individuals to different ideas and concepts, is that right?

A Right, individuals representing typically institutions.

Q And does the product of those negotiations and values which are assigned to the concept which are the subject of the negotiations, does that vary from situation to situation?

A All over the place.

Q Does each of those situations depend on its peculiar circumstances?

A Yes, it does or they do, I am sorry.

Q Is it possible to state a uniform rule?

A None that I know of.

Q Are there even general standards to guide some-

one in determining what the particular value of the concept which someone wishes to promote and see placed into a business venture, are there any guide lines to determine what value that concept will have, apart from the particular negotiations which are conducted with regard to that concept?

A No, because they vary greatly on what the ultimate outcome of the concept will be, what are the economics or other gratifications to be received by the parties to the bargain from the concept.

Q So there aren't even general standards with which we could fix a value in the absence of such negotiations, is there?

A No, I think you have to look at each one individually, try to find that which is analogous because you never find an identical situation, as you can reasonably do and then use the collective body of experience in similar kinds of negotiations vis-a-vis concept, capital and people needed to implement the concept and come out with some fair measure of what people are entitled to.

Q Are you aware of any specific negotiations which took place between Phillips and Prudential regarding the value of this concept?

A No, I am not.

THE COURT: Is it customary in your work to find people who are furnishing only concepts where they add to the concept no managerial efforts and no capital; put the concept in the picture and then depart?

Don't people who have concepts usually bring their own managerial efforts and their own money?

THE WITNESS: Well, your Honor, I can give you two specific examples from my own experience.

THE COURT: I am asking you in general.

THE WITNESS: In general the conceptualizers stay with the project unless the parties they have presented it to exclude them.

THE COURT: All right. What they get is inclusive of their staying with the project and running it for the benefit of the investors?

THE WITNESS: Generally, your Honor, it turns that the conceptualizers are not very good runners and they get dismissed but yet they do retain their equity to the concept. In some cases it is negotiated out.

Q Mr. Rosenthal, are you generally familiar with the practices which prevail in the financial community with respect to compensation of promoters or finders of business opportunities in cash?

A Mr. Urowsky, I will answer yes but I assume

you are not lumping promoters and finders as one and the same.

Q Can promoters and finders often be the same people?

A Finders are typically referred to as promoters but in a true economic sense a promoter is not a finder.

Q In a true economic sense what is the difference between a finder and a promoter?

A As I use those terminologies, because they are words of art, a finder is somebody who gets an idea from X, picks up a telephone and introduces him to Y. Then X an Y get together and the finder may or may not participate in the negotiations and may or may not help structure the deal. That is a finder.

A promoter is somebody who develops a concept, wants to go with it and seeks financing for his project.

Q Mr. Rosenthal, are you familiar with the so-called 54321 formula for compensation of finders of business projects?

A Absolutely.

Q Will you explain what that formula means to the Court and jury, please?

A Yes. There are no absolutes but it is quite frequently used in terms of playing the role of finder to

request a fee which is equal to 5 per cent of the first million, 4 per cent of the second million, 3 per cent of the third million, 2 per cent of the fourth million and 1 per cent of all consideration thereafter.

This is sometimes used -- I have seen much higher fees and much lower fees. 54321 is typically a place where people begin to bargain.

Q Typicably for the finder of business opportunities what would be his compensation on a transaction of approximately $60 million if the 54321 formula was to be followed?

MR. FARRELL: I object to it, it is an arithmetical computation.

THE COURT: It is not so simple. I have been trying to do it myself. This man has a calculator in front of him. Why don't you let him do it on his calculator and if the jury finds his mathematics is not correct, they can do their own mathematics.

I don't know that you can do it in your head unless you are a finder.

THE WITNESS: I have collected finder's fees and I can't do it in my head.

THE COURT: Does your machine work?

THE WITNESS: Yes but it is easier to do it

this way.

THE COURT: Did you work it out, Mr. Urowsky?

MR. UROWSKY: I think I have, your Honor.

THE COURT: Why don't you suggest a number.

Q Is the compensation in a case under the 54321 formula where the transaction is approximately 5 million, the finder's fee is approximately $150,000?

A $140 if I have it correctly -- I think you are right, it is 150.

Q And if the transaction were $60 million --

A Add 1 per cent of 55 million to it.

Q And that would be approximately?

A Exactly 55,000 I think -- 550,000.

Q So that on a transaction which is a basic transaction of $60 million the finder for the transaction would have a fee of approximately $750,000?

A If one agreed to the 54321 and that is the finder's fee.

Q Right.

A Right.

Q Are there variations observed on the 54321 formula?

A Absolutely.

Q Sometimes it is higher?

A Sometimes it is lower.

Q Right. Are the size of those fees conventionally determined by agreement of the parties before the financing takes place?

A No.

Pardon me, I was about to say absolutely before I heard the last words. I apologize for answering you before you finished.

Very often when one is dealing with people in good faith or feeling one is, since there is a high risk -- the reason these fees get so high is that you frequently may try 20 or 30 deals with no success and finally achieve success on one and the compensation on that one is meant to pay for the 20 or 30 failures.

And when one is working as a team you don't like to disrupt the quality of the team by getting into negotiations as to what the compensation will be.

Typically, when working together, in my experience the fee finally gets set when the deal is done.

I can tell you that just this week I have concluded a transaction I have been working on for a year and a half and only when I came in with the final result did I sit down with the principals and talk about the com-

pensation. Because before that it was a futile exercise and why go to an adversary proceeding between friends unless you know you got something real to talk about.

Q Was this allocation of your fee made before the financing actually took place?

A This is a joint venture and, no, it was agreed. I put all the pieces in place and, no, I was at their mercy if the question was did I negotiate, I was at their mercy.

Q Was this a fee in cash?

A No, a participation in a joint venture.

Q Can you tell us how such a fee or participation on that basis was awarded?

A Do you mean in my particular case?

Q That is right, let's take your particular case.

A I told the other parties what I considered to be equitable, they didn't disagree with me and we were all happy.

Q Did you decide what would be equitable on the basis of how much time and effort you spent in working on the transaction?

A No, purely on the result.

Q Was that completely irrelevant?

A Purely on the result and what I considered to be

fair practice for the result and for what I had acccom-
plished for them.

Q Did you ever have a principal disagree with you as to a fee which you asked for?

A Yes, I have.

Q What grounds were used in that situation or generally to sustain an objection to the level of fees? What grounds do people object to them on?

A They were too high.

Q Because of what?

A Because they -- these are value judgments. I have never litigated a fee in my whole life. I have had disagreements and we sat down and worked it out and this is the normal negotiations between people, parties to a deal.

I can walk in and say I think we are entitled to X and they sometimes say yes and that is the instant case I just told you about.

Other times they say why? and depending upon your relationships, both past, contemplated, et cetera, you will either give in, be stubborn or compromise or stick and the facts vary tremendously from case to case.

Q So that it is really impossible apart from going through the negotiation process to be able to deter-

mine the value of a fee?

MR. FARRELL: Objection, your Honor.

THE COURT: It is cross-examination. I will permit him to ask.

Still talking about finders?

A No, it is not impossible.

Mr. Urowsky, it is not impossible to determine the value of the fee because certainly one can turn to one's peers who have been in similar situations and if necessary that is why frequently we provide for arbitration and when you get down to final contracts about subsequent fees, it is not impossible to turn to a group of one's peers and have them assign a value.

You don't need the negotiating process but in normal functioning of commerce it is done in the negotiating process. One doesn't go to an adversary proceeding to try to get a deal done. If that is so, our whole economic process will come to a stop.

Q Every case is different?

A Every case is unique.

Q Mr. Rosenthal, did you consult the case of Commonwealth Refining Company in preparing your testimony today?

A I testified I did.

Q Do you remember the financing of the Commonwealth Oil Refinery Company to be comparable as a project to the Core project?

A I regard it to be analogous.

Now, I am not an expert on the English language. Commonwealth was djfferent than the Phillips Puerto Rican Core. On the other hand it also has many similar characteristics. It is oil, a petrochemical complex, oil refinery and I am not an expert on those words, I already testified to that. It is an oil refinery so I would say that Puerto Rico was conceived by people who basically were promoters, not a major oil company.

(Continued on next page.)

Q Well, let's review that for a moment, Mr. Rosenthal.

When did the financing of Commonwealth Oil Refining take place, originally?

A There were two.

Q The original financing of Commonwealth.

A I believe, and if I may, your Honor, I can refer to the prospectus and give an exact answer.

THE COURT: Well, if the prospectus is here, it may be marked for identification.

THE WITNESS: It's in the briefcase, yes.

A October 23, 1953 was when it was basically conceived.

Q Do you know whether economic conditions in the oil industry or the petrochemical industry were the same in 1968 when Core was financed as they were in 1953 when CORCO was financed?

A From my understanding, having read both Commonwealth, Commerce, and this material, they were not the same. There was the imposition of mandatory -- of the quota system, which changed the economics substantially.

Q Do you know whether Commonwealth as it was originally financed was an oil refinery or a petrochemical facility?

A As it was originally conceived, to the best of my reading of these papers, it was conceived, I believe, as an oil refinery, what I call an oil refinery.

Q Not a petrochemical facility?

A I am not particularly familiar with the nuances of difference. I think it was designed to produce fuels -- I can be sure by referring to the chart -- as opposed to feedstocks for other chemical plants.

Q Mr. Rosenthal, who were the principals in Commonwealth financing, who were the promotors?

A The promotors were an Admiral Carter, a Messrs. Gilbert -- pardon me if I make an error in these names, these are not people I know personally -- Messrs. Gilbert and Carter, who also owned a company called New England Petroleum, and the First Boston Corporation.

Q Was there a man named Carey, Edward Carey involved?

A I think I said Mr. Carey, Gilbert and Carey.

Q I thought you said Gilbert and Carter?

A No, there was an Admiral Carter, Messrs. Gilbert and Carey, who each owned jointly New England Petroleum or New England Oil, whatever it was called, and then the First Boston Corporation.

Q What percentage of the equity in that financing

was retained by Mr. Carey?

THE COURT: We are talking about the equity in the business now, not the financing.

MR. UROWSKY: That's right. Equity in the business.

THE WITNESS: Your Honor, or Mr. Urowsky, that is a moving number, as the company continues to do further financing, but after the initial financing, which involved 40 some odd million dollars, Messrs. Carter -- pardon me, Messrs. Carey and Gilbert, who were partners -- if you want me to I will break it separately -- and New England Petroleum, which they owned jointly, had 137,600, I think it is roughly 20 percent. They had 20 percent, First Boston had 20 percent, and Admiral Carey had 3 percent.

Q Can you tell us what the business of New England Petroleum was in the 1950s?

A As I understand it, New England Petroleum was in the business of distributing on a wholesale basis fuel oils in the New England area.

Q Was it also an oil broker?

A It may well have been. I'm not an expert on New England Petroleum's business.

Q Mr. Rosenthal, was it important in refining business in the 1950s, to your knowledge, to be able to

market the refined oil products effectively in order to construct an economic refinery?

A I can't speak as to any petroleum refinery in 1957, any given petroleum refinery, but it is certainly important in the case of any industrial plant or complex to market its products.

Q And do you know whether in the case of Commonwealth Refining, the refiners sought back-to-back contracts with oil producers in order to protect their ability to market the refined product?

A There is a chart contained in the prospectus which shows that for 83 percent of the proposed output of the refinery, there were contracts to take the output, and it is interesting that most of the contracts, with the exception of New England Petroleum, as I looked at it quickly, were from people who were supplying the raw material, and then in addition, there were some additional options to Esso, -- if other people didn't pick up, Esso could fill in; a whole bunch of other things.

Q I think you said a moment ago that Mr. Carey and Mr. Gilbert and New England Petroleum held 20 percent after the first financing of Commonwealth Oil and Refining, is that correct?

A That is what I said, I believe. If you want, I

will run the names and double check it. Collectively, 43 percent -- that is, the promotional group was 43 percent.

Q And was Mr. Carey in a position, because of his connections with New England Petroleum, to facilitate the marketing of refined oil by Commonwealth Refining?

A I can't testify to that with a personal knowledge. I can certainly say I would assume so. But I'd like to point out, since we are talking about New England Petroleum, which was Messrs. Carey and Gilbert, apparently operated in the New England area. The Commerce Refinery, which was proposed to be built in New England states, as a matter of fact, the New England area consumed 900,000 barrels of oil per day.

The commitment on behalf of New England Petroleum with respect to Commonwealth, involves, I think, something like 6,000 barrels a day. So I can't really assume that that commitment was particularly essential to a market that vast. I would assume they may have been able to find somebody else.

Q Was Mr. Carey a well known man in the oil business?

A I had not heard of Mr. Carey as prominently until the recent election of his brother as Governor, and some of the questions that have arisen in the press about the

financing thereof.

Q Would it be fair to say, Mr. Rosenthal, that when Mr. Carey formed Commonwealth Oil Refining Company with First Boston, he was bringing a financial credibility to the venture as a result of his experience in the oil business and his ability to market oil.

A From everything I have read, I think it is fair to say that both Messrs. Gilbert and Carey, because they were partners, brought to the project expertise, skills, credibility and some quality, yes.

Q Isn't this why he received a large share of the equity of CORCO, Commonwealth Refining & Oil Company?

A Not necessarily. Why did First Boston recieve an equal amount?

Q We will come to that in just a moment.

Do you know whether the share which Messrs. Carey and Gilbert and New England Petroleum received in Commonwealth Oil & Refining was attributable to any idea or concept they had as opposed to their reputations in the oil business and their ability to market oil?

A Mr. Urowsky, we all know, and it is a matter of record, that Commonwealth was an absolute disaster, so that to talk about this expertise in refining or in this kind of thing, really, they had none. They had no experience, and

that's why this thing, this prospectus was to bail out $20,000,000, to save all the money that went in before.

I think they got it because they developed the concept of putting under U.S. flag protection a refinery which was close to a source of crude oil which was not under U.S. flag protection, and then shipping the end product at a lower freight cost to mainland U.S.A.

Q And you believe that the share in the equity of Commonwealth Oil & Refining which they received was attributable to that idea?

A I believe it was attributable to a negotiation thattook place at First Boston Corporation.

Q Who is the First Boston Corporation?

A First Boston Corporation is a major investment banking firm.

Q Would you say that the First Boston Corporation has substantial connections and ties in the United States financial community?

A I'd say it is a very well respected and very substantial entity with good ties, yes, with good ties.

Q Does the First Boston Corporation have the ability when it lends its support and name to a project, to arouse interest in other investors?

A I think they do, but not exclusively.

Q Do you know whether either Prudential Oil Corporation, the Connecticut corporation, or Mr. Shippee or Mr. Willey or Mr. Young had comparable financial standing?

A Based on that which I have read, I would certainly not say that Prudential had comparable financial standing to First Boston Corporation which is among the reasons that they sought out people such as Phillips who were of major financial significance and technical expertise.

Q What was the percentage of CORCO that First Boston owned?

A The promotional shares -- because prior to the third party financing, it was a 100 percent between the parties -- were allocated, one equal amount to First Boston Corporation, one equal amount to Messrs. Gilber and Carey and their locally-owned New England Petroleum and then a differential amount to an Admiral Carter.

Q Have there been financings of petrochemical facilities in which promotional groups have received a participation interest other than the interest which you described in CORCO?

THE COURT: I assume this has to be within a time frame?

Q Within a period since the end of World War II.

A By CORCO, we are now talking about Phillips Puerto Rico Core?

Q No, I'm talking about Commonwealth.

A There was the proposed financing in Commerce which I mentioned earlier and there may have been others. These are the ones I'm aware of.

Q Are you familiar with the financing of Texas Butadiene in the late 1940's?

A No.

Q And do you know if there was a promotional group associated with that enterprise?

A I am not familiar with it, so I know nothing about it.

Q How about Grampian Chemicals? Are you familiar with that proposed financing?

A No, I am not, nor by virtue of my lack of familiarity am I in a position to state whether or not I would consider them analogous to the Phillips Puerto Rico Core. I would state I consider both Commonwealth and Commerce analogous.

Q Despite the fact that neither of those was for a petrochemical facility?

A Yes. They both had very common characteristics -- all three did, pardon.

Q Mr. Rosenthal, do you know how much money was spent in aggregate by Prudential Corporation, the Connecticut corporation, in promoting this project?

A Not exactly, but I believe to be very little.

Q Can you give us any estimate of the hours spent by Mr. Shippee, Mr. Willey and Mr. Young in promoting this

project?

A No, I can't. Mr. Urowsky, I had no familiarity with the parties. I never met Mr. Shippee until yesterday at lunch. I was purely asked to review from a standpoint of my own experiences and the facts that appear to have occurred what I thought, looking back, would have been equitable had the parties negotiated at that time.

Q But they did not negotiate at that time?

THE COURT: We all know that.

Let's frame another question.

MR. UROWSKY: I have no further questions.

Oh, just a moment, please.

THE COURT: All right.

(Pause.)

BY MR. UROWSKY:

Q Mr. Rosenthal, I have just one last question which I failed to ask before.

If you had been told that in 1965 Mr. Shippee placed a valued of approximately one and a half million dollars on his share of the value of the promotion of the petrochemical facility, would that have affected the value which you placed on the concepts which were alleged to have been offered by Mr. Shippee and his associates?

A I would have found it very confusing because it is a clear-cut contradiction to that which I found in the proposed brochure. Certainly 27 per cent of a major chemical complex represents much more than a million and a half dollars, assuming any success of the petrochemical complex.

MR. UROWSKY: I have no further questions.

THE COURT: Any redirect?

MR. FARRELL: Just one or two questions, your Honor.

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Rosenthal, from your review of the documents and from your familiarity with the other materials you have studied, were Shippee, Willey and Young finders in the situation?

A Absolutely not. They were promoters or conceptualizers.

Q Will you tell me rhe difference, why they were promoters?

A As I said, a finder is one who -- I would have been a finder had Mr. Shippee or Mr. Young or it doesn't matter who come to me with this and said, "Hey, here's a great idea. Somebody can get an oil import quota," and

I picked up and called someone I knew at Esso and said, "Here's a way to get an oil import quota," and the project ultimately resulted in the development of a similar plant; I would have felt entitled to a finder's fee.

THE COURT: Is that what you regard this brochure as, a way to get an import quota?

THE WITNESS: I regard this brochure, your Honor, as being a tying together of a lot of pieces, many of which had not worked, and some of which had even resulted in a letter which I testified that I had read before, where Phillips said it didn't have an interest, as coming in with a concept which might indeed work and which apparently ultimately did work. Yes, that is how I regarded it.

THE COURT: Worked to get an import?

THE WITNESS: Worked to get the import quota, which made this whole thing feasible, because without it, clearly the plant would not have been feasible.

Q Mr. Rosenthal, you testified, I believe, that the words "finders" and "promoters" are words of art. What did you mean by that?

A They are interpreted differently by different people, as opposed to having a specific, scientific designation, so, you know, like the number 2 --

THE COURT: It's just the opposite of the word of art.

THE WITNESS: I'm sorry, then. That shows my problems with the English language this morning.

Q In other words, did you mean that the words are frequently used interchangeably where, in fact, their meanings are different?

A No, I'm sorry. What I mean by "words of art" -- what I mean was that they are used within the industry, by this, I call, the investment banking industry, and the finder is somebody who is taking somebody else's concept or idea to somebody else for implementation or financing or whatever. A promoter is the man who generates the idea, which is seeking the financing or the implementation.

Q And have you found confusion in the use of those terms outside of the investment banking community? Do people use one when they mean the other?

A I just was confused myself, so clearly you have to find confusion.

MR. FARRELL: Thank you.

That is all I have, your Honor.

THE COURT: Anything else for this witness?

MR. UROWSKY: I have just two questions.

RECROSS EXAMINATION

BY MR. UROWSKY:

Q Do you know what role was played in the preparation of a proposal for a petrochemical refinery by Messrs. Coan and Chapman prior to their approach to Mr. Shippee and his associates?

A My knowledge of their role is related to my having studied the documents in this case. I have never met either Messrs. Coan or Chapman.

Q Do you know from your reading of the documents and your review of these matters or from any discussions you have had, whether Messrs. Coan and Chapman came to Mr. Shippee with the idea of building a petrochemically oriented refinery in Puerto Rico?

A As I understand the facts, Mr. Shippee was introduced to the situation through someone at E.M. Warburg & Company, another investment banking firm.

THE COURT: You can't be introduced to a situation. It is people they introduce you to, isn't it? That is what counsel is asking you.

Is it your understanding that the Warburg firm introduced Mr. Coan to Mr. Shippee?

THE WITNESS: Yes, it is.

THE COURT: Is that the question?

MR. UROWSKY: Yes, your Honor, that is the question.

THE WITNESS: Yes.

THE COURT: All right.

Q Do you know whether or not Mr. Coan and Mr. Chapman had an idea which they were bringing to E.M. Warburg and to Mr. Shippee?

A Yes, I believe they did.

Q Is there any correlation between finders fees and promoters fees, Mr. Rosenthal?

A Promoters typically do not seek fees. Promoters seek equity participations and managerial roles in the venture.

Q And how high and how low do those participations run?

A From as low as one can imagine to, I have seen -- I was involved in one financing where the promoters retained 70 per cent, put up no money whatsoever.

Q Could it also be as low as 1 per cent?

A Anything is possible. I have never seen one that low, and I am sure there may be some.

Q In preparing for this, to give your testimony, did you have occasion to look at Joint Exhibit 28 in this case?

MR. UROWSKY: I believe it is in evidence, your Honor.

A I believe I did review this, yes.

Q And would you read the description of the distribution of equity contained in this letter?

MR. FARRELL: Objection, your Honor.

THE COURT: Has it already been read?

MR. FARRELL: It is in evidence.

THE COURT: Then counsel may read it. If it is already in evidence and if it hasn't been read before. I don't recall it being read.

MR. UROWSKY: Yes, your Honor, I will read it.

(Mr. Urowsky read from Joint Exhibit 28 in evidence to the jury.)

MR. UROWSKY: I have concluded my recross.

MR. FARRELL: I have nothing further from Mr. Rosenthal.

THE COURT: You are excused.

THE WITNESS: Thank you, your Honor.

(Witness excuwed.)

MR. FARRELL: Your Honor, I have nothing further except the introduction of some exhibits which I will now offer.

We will retain the numbering system as we

have.

The first is Defendant's Exhibit 207.

MR. MacCRATE: No objection.

THE COURT: No, objection, D-207 will be received in evidence without renumbering.

(Exhibit D-207 was received in evidence.)

THE COURT: Can't we go through all of them and then I can have a recess for the jury?

MR. FARRELL: Right.

Defendant 205.

MR. MacCRATE: No objection.

MR. FARRELL: Defendant 199.

THE COURT: D-205 and D-199 received in evidence.

(Exhibits D-205 and D-199 were received in evidence.)

THE COURT: How many of these are there, Mr. Farrell?

MR. FARRELL: About two or three more, your Honor, and then I have plaintiff's exhibits.

THE COURT: So that you can resolve them and agree upon them, I will ask the jury to withdraw to the jury room at this time while we attend to these exhibits.

(Jury left the courtroom.)

THE COURT: Would you please work it out and if there are any to which objection is taken, would you notify the Clerk?

MR. FARRELL: Oh, sure.

THE COURT: And then we will be in recess.

Find out which they are and talk to your adversaries about them.

MR. FARRELL: Will this take a very short time, your Honor.

THE COURT: All right.

(Recess.)

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(Jury present.)

MR. FARRELL: Your Honor, I am offering the following exhibits to which I understand there is no objection:

Defendant's Exhibit 205 for identification,

Defendant's Exhibit 199 for identification,

Defendant's Exhibit 198 for identification.

And the following plaintiff's for identification:

91, 122, 123, 124, 125, 127, 128, 139 and 159.

THE COURT: All of those exhibits will be received in evidence, no objection.

(Above listed exhibits were received in evidence.)

MR. FARRELL: Your Honor, I would like now to read one joint exhibit not previously read -- there are actually two exhibits -- Joint 60 and 61.

(Exhibit read.)

MR. FARRELL: With respect to the memorandum, I will not read all. I will start with March 8, 1965, to the record from Rafael Durand, subject Puerto Rican third refinery project.

I will read starting on the bottom of page 3,

Paragragraph 7.

(Memorandum read from.)

MR. MacCRATE: Your Honor, I would like to read the omitted first paragraphs of the memorandum.

THE COURT: Would it be agreeable to do it after the luncheon recess?

How much would it take to do that?

MR. MacCRATE: The first six paragraphs were omitted.

THE COURT: You may read it.

(Memorandum read from.)

THE COURT: All right.

MR. FARRELL: Your Honor, I have several further exhibits to read.

THE COURT: All right, in that case we will break for lunch.

About a quarter of three, members of the jury, would you please return. You may withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: I will see you after lunch, gentlemen.

(Luncheon recess taken until 2.45 p.m.)

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p.m. jklt 1

AFTERNOON SESSION

2:50 p.m.

(In open court - jury present.)

THE COURT: Good afternoon, members of the jury.

Mr. Farrell, you may proceed.

MR. FARRELL: Yes, thank you, your Honor.

I want to read briefly from the deposition of Stanley Learned. This is page 53:

"Q Early in 1961 when you got to know him, (that is Mr. Anderson) did you engage in any business with him?

"A Well, Phillips -- I didn't as such, but Phillips Petroleum Company made a retainer agreement with Mr. Anderson, as I remember it, in 1961. I think it was shortly following that retainer agreement that I went to his office with Mr. Adams.

"Q What did this retainer agreement provide?

"A I don't have a copy of it.

"Q Do you know what duties Mr. Anderson performed pursuant to this retainer agreement?

"A I judge he performed whatever Mr. Adams asked him to. You would have to ask somebody besides me because I don't have the retainer agreement and I wasn't in contact

with him, generally."

Now, I'm reading Joint Exhibit 33.

(Mr. Farrell read from Joint Exhibit 33 in evidence to the jury.)

MR. MacCRATE: Excuse me, your Honor, this was read to the jury at page 120 of the transcript on the first day of trial, and the two paragraphs that Mr. Farrell has just read he omitted and I read to the jury at that time. This is solely repetitious.

THE COURT: If it's been read before, there is no need to read it now.

MR. FARRELL: All right, your Honor.

THE COURT: I must say, I did not recall that it had been read, but those things do happen. Let's not read it twice.

MR. FARRELL: I did not recall that I had read it.

Reading Joint Exhibit 53E.

(Mr. Farrell read from Joint Exhibit 53E in evidence to the jury.)

That's all I have, your Honor.

THE COURT: Plaintiff rests?

MR. FARRELL: Yes, your Honor.

THE COURT: Are there going to be motions?

MR. MacCRATE: Yes, your Honor, there are.

THE COURT: I think perhaps then I ought to excuse the jury for the balance of the day.

Members of the jury, we will resume at 10:30 tomorrow morning.

Please withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: Are you prepared to go forward, or do you want a recess?

MR. MacCRATE: I am prepared.

THE COURT: All right.

MR. MacCRATE: On behalf of the defendant, I would like at this time to move to strike the tesimony of Lawrence Rosenthal as incompetent, irrelevant and improper method of attempting to supply a missing element of plaintiff's proof.

I recognize that under Rule 704 of the rules of evidence that it is now permissible to have an opinion on an ultimate issue given by an expert. This does not allow a purported expert to substitute his assertions as a link in an essential chain of evidence, where the proofs have been empty as to that link.

Mr. Rosenthal's testimony and the opinions that he advanced were given as to matters on which he acknowledged

that he had no expertise.

He reported to value a purported concept of a petrochemical complex at the same time that he said that he had no expertise with respect to petroleum or petrochemicals.

He said that this was an alleged concept of a way to get an oil import quota. There was absolutely no evidence that this gentleman had any familiarity with how you went about getting an oil import quota.

He was drawing inference upon inference on matters that are totally within the province of the jury, and where he could not offer one jot of qualification beyond any of us to draw conclusions.

Now, he acknowledged that there were no guidelines. He said that every case was dependent upon the negotiating position of the parties, and in his words upon their unique facts.

Now, to generalize to an opinion from such a predicate, I suggest, is wholly impermissible, and that where he admits ignorance of the negotiating position between the parties, where he points to that negotiating position as being that the central moment of truth, when somehow values emerge without any relation to the merit of a particular concept or idea, to suggest that that kind of evidence is relevant in this case, suggests to a jury that

it is relevant, I respectfully submit is extremely prejudicial, and ask that the testimony be stricken.

THE COURT: I think it would be more convenient for me to hear all your motions first, if there is no reason why you cannot proceed in that fashion.

MR. MacCRATE: I would like at this time to move on behalf of defendant to dismiss the claim of joint venture. I submit that essential elements of the claim of joint venture are lacking.

The law of New York, as applied in this court, diversity action, has in recent past been set forth by Chief Judge Edelstein in Yonofsky vs. Wernick, 362 Fed. Sup. 1005, 1973.

Among the authorities upon which Chief Judge Edelstein relied was the case in the New York Court of Appeals, an opinion by Chief Judge Conway in Steinbeck versus Gerosa, 4 New York 2nd 302, 175 New York Supplement 1, 1958.

THE COURT: First Series Supplement? It couldn't be.

MR. MacCRATE: Second Series, your Honor. I spoke myself.

THE COURT: 175 Supp. 2nd?

MR. MacCRATE: Yes, at page 1.

I would inquire, looking at the criteria as laid out in those precedents, where here is there evidence of any contract of joint venture? What meeting of minds has there been on anything?

Who are the parties to the joint venture? What are their respective interests? What are their obligations? What do they have in common? What do they control in common? What did they manage in common?

What was the provision as to the division of profits? Where was there any agreement as to the bearing of losses?

What agreement was reached as to the sponsorship of any project? What did each agree to contribute?

What assignment with respect to any project was undertaken and understood to be undertaken by all concerned?

Again and again we find as we look at the evidence that is before the Court that it was all left open for future agreement and essential terms were left open. It was never fixed what division of equities there would be.

We find that as recently as 1973 new percentages are being quoted among the parties. We go back to January of 1965 and we are told of a 25, 25, 25 and 25 arrangement among Wright, Anderson, Shippee and Willey.

We look again --

THE COURT: What four names did you mention?

MR. MacCRATE: Wright, Anderson, Shippee and Willey.

We are told that the division stat at that time related back to the very beginning.

This is the burden of the proofs. One looks in vain in that letter of January 1965 for any reference to Prudential. What is being talked about there is division among these individuals.

We come to October of 1966, the name of Anderson disappears. He acknowledges he never gave a release or made any assignment, and the percentages have changed

and now percentages were being given to Prudential and we move from there then on to what we heard yesterday about the situation in 1975 in a gesture of flippancy and see that there is a casual reference to 10 per cent being assigned to Miss E. Laneous.

THE COURT: I don't consider that necessarily flippant. You could possibly read that with a different exhibit that 10 per cent was assigned to somebody else. I assume the author of the letter didn't want to reveal the name of Miss E. Laneous as he referred to it in the exhibit.

MR. MacCRATE: I would submit that is precisely what was intended but it was obviously regarded by the writer as being a clever turn of phrase.

THE COURT: Regardless of that, I think it is a different question what they did after the controversy arose. If they had agreements as to how they would divide the proceeds of their lawsuit, that may have a bearing on the interest of the witness in the outcome of the litigation and it may bear upon his credibility accordinly.

But I suppose that if they prove that persons acting for Prudential brought a claim into existence before the lawsuit was brought, that it wouldn't really matter

after the lawsuit except as bearing upon credibility, how much they promised to give Miss E. Laneous, or how much they promised to give to Willey or Young.

It is somewhat bizarre, they talked about 10 per cent. These people, some of whom I assume are not careless about money, still don't know what their interests are. That is a different question, isn't it?

MR. MacCRATE: I submit, your Honor, that the fact that they leave these things open is an indication that the terms of any joint venture were never settle.d

THE COURT: Are we talking about a joint venture as between your client and Prudential or a joint venture between Willey, Shippee and Young as to which apparently at least it may be found here that they used the Prudential Oil Company of Connecticut as the vehicle.

MR. MacCRATE: This bring me to a further basis of my motion and a separate motion to dismiss for failure to join indispensable parties and the absence of the real parties in interest pursuant to Rule 19 and Rule 17-A.

The claim is being made that Shippee, Willey and Young personally are joint venturers along with Anderson and Wright. This is what the proofs on the plaintiff's case show, that it is they if anyone who is

entitled to assert a claim against Phillips. Prudential is a stranger to that relationship. No assignment of interests are shown, there is no indication of divisions moving back and forth and I submit there is no proof before the Court on which any division could be made among these individuals: and yet it is these individuals who are identified in the plaintiff's proofs as being the ones who have the claim.

(Continued on next page.)

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Then we have Mr. Shippee in 1965 personally asserting a claim which is fundamentally the same claim that is being asserted against Phillips in this action.

Would a judgment for Prudential New York or against Prudential New York in this case determine the rights of Mr. Wright, Mr. Anderson, Mr. Shippee, Mr. Willey, Mr. Young?

These two considerations of joint venture and real party in interest appear to me, your Honor, to interlock and where a plaintiff creates such hopeless confusion to argue at the same time that there were agreement on terms of joint venture with whom a joint venture was consummated, and just what is going forward, what was agreed -- all of these essential terms lacking -- and the capstone of it is the confusion with respect to any interest in the joint venture. And for this whole miscellany of reasons, I suggest that the claim based on joint venture has to be dismissed.

I would invite the Court's attention to Judge Weinfeld's opinion in Allen & Co. vs. Occidental, which is docket number 67 Civ. 4011, decided August 30, 1974, in the Court of Appeals for the Second Circuit on appeal, the Second Circuit has left open an aspect -- and the aspect of Judge Weinfeld's opinion which is most relevant here.

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THE COURT: That is a reported decision of Judge Weinfeld, is it not, or is it a different one with the same title?

MR. MacCRATE: It is, your Honor.

THE COURT: I think we have a reported decision involving Occidental Oil and Allen & Co. That is the same case you're talking of?

MR. MacCRATE: Yes, your Honor, and in the recent past -- I do not have in my notes at this moment, but will undertake to provide it to the Court -- the Court of Appeals has acted in the same manner.

THE COURT: What did they leave open?

MR. MacCRATE: Whether the essential term of a joint venture agreement could be inferred. I submit, on the facts of this case there would be no possible basis for inferring these various terms, and the Occidental case came down to just one term that had to be inferred. Here we have a whole host of terms, and where the very document upon which the entire claim appears to have been based, a letter sent by Mr. Learned to Mr. Shippee, in November of 1962, concludes with the paragraph relating to the negotiation of contracts, which it is of course acknowledged never negotiated.

Finally, your Honor, I would like to move to

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dismiss on behalf of defendant for failure to prove with credible evidence that any legally protected concept or material either was conceived, formulated or developed by plaintiff or was utilized by Phillips in the Phillips Puerto Rico Core.

It is undisputed, on plaintiff's proof, that the proposal was rejected by EDA. There is no proof of any presentation of the proposal to the United States government. Whatever it was, it was freely shared and shown by would-be promotors, without any proof of novelty or that something was being disclosed, that in some way it was thought by Shippee, Willey or Young had any reason to be held in confidence. They were talking to everyone they could find to listen in December 1962 and January of 1963, seeking to find someone who would join with them and work on a project.

There has been no link of what was conceived, put together, reduced to paper, what was in any writing of Prudential to the actual filing with the United States Department of the Interior, J-49 and J-50, which was the filing made by Phillips with the Interior Department in May of 1964.

What we are told this all related to was how you get a quota, and yet what is submitted to the Interior

Department has been linked by no evidence back to anything that was Prudential's.

In another opinion of Judge Weinfeld in a somewhat related case, in which Phillips was involved a few years ago, Krisel N. Durand, which is reported at 303 --

THE COURT: I have it inside.

MR. MacCRATE: -- there are extensive citations and footnotes collecting various authorities with respect to appropriation of ideas, and I respectfully submit that there has not been shown either an idea that is legally protectible nor that it was utilized by Phillips.

My final point would be, your Honor, that the time must certainly have arrived, at the very least, if your Honor does not see fit at this time to grant a motion to dismiss, that there should be election of remedies. As the proofs have evolved --

THE COURT: Election as between what and what, if you will?

MR. MacCRATE: Between the idea that these parties were going along as joint venturers, using an idea together, and on the other hand that Phillips stole an idea; either it is one or the other, and when we have these two matters being presented together to a jury, we

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are placed in the difficult position of having a witness such as we have had on yesterday afternoon and this morning, talking about matters which have all the aspects of proceeding together on a joint project which was the formation of a corporation. They organize a corporation as the consummation of that venture, and then we are told that the participants are to share in its fruits.

But we are told that that is in some way a measure of the value of a concept that has been misappropriated, and if the notion is that we are proceeding in joint venture together to do something, and as a result of that we are entitled to a certain participation, that is one line of analysis that a jury might be expected to be able to follow through, but where in midstream or back and forth it is argued at one point that, no, we are not talking about a joint venturer's share, we are rather talking about the value of an idea, but that is going to be measured by the joint venturer's share, I submit that it defies the lawyer's capacity to separate the concepts, and what it can do in a juror's mind, seeking to sort out the principles, would be highly prejudicial.

THE COURT: All right.

Do you want to respond, Mr. Farrell?

MR. FARRELL: Yes, your Honor, I will respond.

Your Honor, I will not respond in the order the motions have been made, but I will, I think, cover every point that Mr. MacCrate has made.

Mr. MacCrate has stated that there is no competent evidence that any of the concepts developed by Prudential were utilized by Phillips in the presentation of material to the Department of Interior.

Turning first to the question of whether Prudnetial developed legally recognizable concepts, the cases that we have collected in our brief are quite clear that these concepts do not have to be new under the sun or that they have to be previously protectible in some other way, or previously unthought of.

The type of business concepts which are protected are those which ordinary businessmen can conceive of on their own, and do conceive, and thereafter attempt to use them for their own benefit, because competitors or other businessmen are not aware of them.

The courts have traditionally protected them, and the cases in our briefs at pages 27 through 30, show that these types of concepts have been protected by the courts.

Indeed in the old case of E. I. duPont against Mazlin, Justice Holmes in effect was saying, what he says was whether the plaintiffs have any valuable secrets or not the defendant knows the facts whatever they are through a special confidence that he accepted. The property may be denied but the confidence cannot be.

The point of that, your Honor, I think is that one who has availed himself of the concept of another will not be heard to say at a later date when he is caught that the concepts were worthless if in fact they were worth his taking. He will not be heard to say they were available, not new, or indeed that any person could have availed himself of them.

I think the point is also made in the New York State case in the American TCP case, a rather simple idea which simply was to sell a gasoline additive in cans and the effect of that decision was that after the plaintiff had gone to Strauss Stores snd Strauss Stores had worked with it and asked him for some information, yes, the idea was not novel; yes, the idea was probably quite banal; but Strauss Stores was no longer free to use that idea because they had acquired it in a confidential relationship.

THE COURT: What was the remedy there?

MR. FARRELL: In that case, your Honor, the litigation was terminated after a motion to dismiss the complaint was denied or denied and affirmed. I don't think they got to this. I have other cases on this point and I will make that when I come to it.

As to the actual theft by Phillips of the concepts, the record, I have not read all of these documents at this time to the jury. I will if I feel it is necessary in summation but they are in the record and I will read them to you now, the ones that I have not read.

THE COURT: Don't read them to me, call my attention to them and tell me concisely what you think a particular exhibit number stands for. I will look at it but certainly don't read it.

MR. FARRELL: First, your Honor, to the issue--to the first concept, I will put these four down much as I did yesterday in court.

The first concept that no prior commitment is necessary from petrochemical sources before the quote could be applied for and the petrochemical facilities financed or built.

Joint Exhibit 33 which is the document I have read which Mr. MacCrate said I previously read clearly show

up in May of 1962 the Brown-Chapman group thought that a sine qua non of this allocation would be a prior commitment with a chemical company.

Now, if you turn to Defendant's Exhibit 199, which is the conference before the Department of the Interior on March 16, 1965, you will find on page 6, on page 11, on page 27 and on page 36 the representatives of Phillips, in this case I think Mr. Keeler, consistently stating that it would be impossible to proceed with the petrochemical complex if one required a contract first with a chemical company, because he said those companies are not ready to make such a commitment.

This testimony by Mr. Keeler is a complete and absolute statement of the Prudential concept, we have been moving ahead and persuading the Department of the Interior without a prior commitment.

The same thing is true, and again I am talking, your Honor, about concepts, not words, as the draft of the brochures were worked over the words, yes, were lost but the ideas stayed the same.

In Joint Exhibit 50 there is the letter of Mr. Learned on page 2, lines 15 to 19. Mr. Learned says that we recognize that substantial quantities of chemical materials will be produced which cannot be currently

consumed within Puerto Rico. Accordingly we are prepared to apply the efforts of our worldwide marketing organization toward the successful sale of these chemical products.

Again the concept that Phillips accepted after Prudential came in and after they had access to our brochures -- I don't think there is any question in the record that they had access to our brochures. The copying itself proves that even if that particular sentence or that particular group of sentences does not contain the precise concept I am talking about.

But once Phillips had access to our brochures these ideas were carried through from 1964 when they first copied it to the granting of the application and to the agreements with the EDA.

If you turn again to Joint Exhibit 50, page 1, development of satellite plants around a core industry, Paragraph 2, several satellite plants can only be developed if economically attractive situations exists for each.

The whole point, your Honor, was you put the egg before the chicken. You don't have to have a petrochemical company ready to take that feedstock before you can build your petrochemical core complex.

And that was the first concept that Prudential

had come to Phillips with or had come with in their brochure.

Again, page 7 of that same exhibit, Joint Exhibit 50, the same idea is carried through:

A core chemical industry built on a large scale and initially sustained by outside markets. Again, no commitment from anyone in Puerto Rico to take these feed streams and that was Prudential's concept and Prudential's idea because Prudential came to it, a sina qua non for the Bruce Brown and Chapman, that is to have a commitment from a chemical company.

Joint Exhibit 53-E, the testimony of Mr. Keeler which I read before the jury was excused, which is the same thing, if you create the cheap feed stock the satellites will come.

Again, your Honor, you don't need it ahead of time. All of these things were presented to the Department of the Interior, some in brochures and some in testimony. But all went to the Department of Interior. Let's get rid of this concept that you need a contract with a petrochemical company first.

That is where Brown and Chapman failed, that is where the log jam started. We have broken through this now by building the core first, we got the egg before we

ahve the chickens.

The second concept, the flexible refinery. Well, again, Exhibit 50, page 2, Paragraphs 4 and 6, feedstocks and processes, steps should be directed to minimize the production of refined products such as motor fuel. The sponsoring company should evidence its acceptance of the long range grown commitment in Puerto Rico.

Again, the idea would be that petrochemicals were to be the basis, the eventual basis in this complex.

Now, as it happened, after some negotiation with the Department of the Interior, Phillips was able to extract from the Department of Interior an agreement that if they keep the petroleum down to 49 and a fraction per cent and not reduce the amount of petroleum for ten years, because they say if we bring it down that far we think we are entitled to this ten years of 49 per cent petroleum.

But even then they had promised a reduction in the amount of petroleum that they would produce from the new petrochemical complex.

Defendant's Exhibit 205 which I introduced this morning, a memorandum dated April 13,1965, shows in Table 1 that after 1972, the barrels per day of motor

fuel will be 24,748 barrels. After 1972 that would be reduced in 1973, it would go down to 21,006.

In 1974, down to 19,730 barrels a day, where it would remain for several years.

(Continued on next page.)

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With each of these reductions in fuel comes a proportionate increase in petrochemicals. Mr. Urowsky went after Mr. Rosenthal about, well, was this a flexible refinery, do you know whether this was a flexible refinery? Well, it certainly was a flexible refinery, because Phillips was projecting a flexible refinery in April 13th, on April 13, 1965; because they projected that within seven years they would reduce the petroleum. That was also Prudential's idea.

Idea number three was the one that Mr. MacCrate tries to nail down as being a quasi-public utility, but which Mr. Diaz testified, page 923 of the transcript, really was a concept of first refusal, and the whole point, as Mr. Rosenthal quite rightly said, was to keep the feedstreams on the island, if you could; whether you did that by a public utility method or you did it by a quasi-public utliity method or you did it by subsidies or you did it by a first refusal was unimportant.

The concept that had to be sold to EDA and to the Department of the Interior was that the feedstreams would be kept on the island if at all possible. And this was an important provision, because you were, unlike Brown and Chapman before, when Brown was in with him, you were going to jettison the concept of having a petrochemical

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contract first, and so the EDA had to be persuaded that the feedstreams would be kept on the island.

Now, there is, again, no question that this was effectively done. It eventually came about to be a first refusal. But the concept of keeping the feedstreams on the island was the heart of it, and Mr. Diaz recognized it as soon as the presentation was brought to him. And that was what was eventually done.

Again, another of Prudential's concepts, a way of getting this log jam broken, of getting EDA approval, of getting Department of Interior approval for a quota, because without the quota you had no petrochemical complex. With the quota you had, because you had a tremendous financial advantage.

And there is a letter -- there are many, many evidences of this. It is in Defendant's Exhibit 198, the first refusal. It is in Joint Exhibit 70. It is in Defendant's Exhibit 207. It is in a number of exhibits.

Now, the fourth concept which Prudential brought to this project was that the corporation which operated the eventual Core facility that will be built promote, induce and encourage satellites, working with the government to try to bring them in; again because you weren't going to have this commitment first. And the Exhibit 215 twice quotes

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the charter that they were going to have for the corporation; the last two sentences of that charter have this provision. And because -- I will read it, because it is brief, and in addition, the language, even the language which Phillips uses thereafter remains similar.

The final sentence of the proposed charter:

"The company will also promote additional chemical and petrochemical projects related to the development of the petrochemical industry."

Now, again we can look again at J-50, the final presentation to the Department of the Interior, with Mr. Learned's letter of December 16, 1963, page 2, lines 2 to 8:

"In addition, we will place all of the technical and marketing capabilities of Phillips Petroleum Company in support of efforts to develop additional investment by ourselves and our customers. After this initial stage, the project itself should offer so many benefits to Puerto Rico and its customers that it will generate on its own the funds required for continuing development."

That is the same thing that Prudential said. We will induce people and we will promote our own satellites. And that is what Phillips has done in a very weak and rather ineffective way.

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Now, those four ideas, those four concepts were all legally protectible and they were all taken by Phillips, and I think that since the evidence of access is so clear, I am not going to take your Honor's time with it.

Now, Mr. MacCrate hashed up as he --

THE COURT: Let's stay away from any pejorative comments of that sort.

MR. FARRELL: I'm sorry. I think it is a good comment, because I think it is true. I was about to say from his point of view it is what he should have done, but he did, he hashed up the joint venture.

The fact is that the letter of November, 1962, was written by Mr. Learned to Prudential. There is no claim here, and this is what I mean by the hashing up, there is no claim here that anyone other than Prudential had a joint venture with Phillips. The letter was to Prudential, and each of the people that met with Mr. Fischbeck, with Mr. Conn, with the others, was either an officer of Prudential as Mr. Young was, a consultant working with Prudential. That did not make Mr. Young a joint venturer, nor did it really make his relation with the venture all that ambiguous.

Now, we have in the record enough evidence of a joint venture at least --

THE COURT: Let's talk about a joint venture with

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Phillips. I don't think there is any -- perhaps I shouldn't even make such a comment.

MR. FARRELL: I think your Honor there may have been a sub-joint venture. I think that was what Mr. MacCrate is going after.

THE COURT: Well the other thing he's going after is that at one point Mr. Shippee testified that he personally had done one =quarter of the effort, and we are led to believe that the other three were Anderson, Young and Willey, and as far as Anderson's participation is concerned, there is probably not any evidence in this record which would permit Prudential to recover for what Anderson did.

Anderson was already on retainer to Phillips for one thing. In the second place, he disclaims any claim here, and he wasn't assigned any rights, and he had no salary from Prudential, and no agreement with them that I could see, so that I think --

MR. FARRELL: But, your Honor, it is also clear that Mr. Anderson was not the one who developed these concepts. That is what we are talking about. Mr. Anderson was approached by Messrs. Shippee and Willey and Young, and he said he would get Phillips Petroleum involved in the venture.

Mr. Anderson said he expected a share of the

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venture, of our part of the venture, and he expected to continue to receive whatever retainer it was from Phillips.

Now, if in fact -- I think what happens here is we are switching from one theory to the other. The concepts were developed by Willey and Shippee and Young, not Mr. Anderson. To the extent that concepts were stolen, they were stolen only from Prudential. They were not stolen from Mr. Anderson. Mr. Young was working as a consultant for Prudential. Mr. Shippee was chairman of the board, and Mr. Willey was president.

Now, as far as the joint venture is concerned, Mr. Anderson -- we start with the letter --

THE COURT: Well, the letter in itself won't create a joint venture.

MR. FARRELL: No.

THE COURT: Let's talk about a joint venture between Phillips and this plaintiff.

MR. FARRELL: Right. I will, your Honor.

THE COURT: All right.

MR. FARRELL: We believe that a joint venture has been constructed and may be inferred from all the testimony that has gone in.

You have the following important aspects. It is clear, incidentally, in the law, that a joint venture

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may be created even though the parties at the time they are doing it do not write up a complete agreement, indeed, do not even articulate a complete agreement. And that's been recognized for many, many years.

The cases are at pages 20 and 21 of my brief, and I won't take the time to say that.

But what happened here was this, first we got a letter. We then met with the Phillips people. The Phillips people looked at our brochures, they made some comments on it, they made some suggestions, they critiqued it, so to speak, and they had a number of meetings, undenied, to move ahead the project.

The idea of this was to prepare a brochure in order to present that to the Department of Interior, to obtain a quota. That was the direct object of all of the work that these people did. The quota was the important thing.

Now, not only did Phillips work with Prudential, but Fischbeck acquiesced in becoming an officer or an officer of the proposed new petrochemical project. He corrected his resume, when it was presented to him.

There is evidence, and I think there is evidence that the jury is entitled to evaluate, because Mr. Keeler changed his story, there is evidence that Mr. Learned and

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Keeler went to Washington in March of 1963 to make a presentation concerning the quota.

Now, Mr. Keeler has changed his testimony, but that was what his testimony was when he was originally deposed. The two principals were moving --

THE COURT: Mr. Keeler and who?

MR. FARRELL: Keeler and Learned.

THE COURT: Both from Phillips?

MR. FARRELL: Yes, went at a time when we were speaking to them and at a time we understood they were going to do marketing reports, the chronology is very important.

THE COURT: I understand that. Are you arguing your joint venture issue now?

MR. FARRELL: Yes.

THE COURT: Let's stick with the joint venture.

MR. FARRELL: I am. I am saying while we understood they would be preparing marketing reports, on the other hand, Keller and Learned went to Washington, according to Keeler the first time he testified, on the issue of obtaining a quota. He met Chapman there and went to the Department of Interior.

THE COURT: To get into a joint venture with another person, do you not have to have the intention or else

exhibit the intention to become bound to a joint venture? Isn t it just like a partnership? You can't become a partner by act --

MR. FARRELL: I think you can.

THE COURT: You have to either intend to become a partner or conduct yourself in such a manner that your co-partner reasonably believes that you intend to become a partner.

MR. FARRELL: Let me go on. That is true, too.

For example, in the brochure there was a provisior as to the shares that the management would get. That was given to Phillips. But more than that, Anderson testified that -- and he may not have been using the term as it was legally understood -- but Anderson testified in order for this project to proceed, they would need a major petroleum company as a partner.

And Anderson told them that Phillisp would work with them. He is the one that got the meeting, the one who set it up.

In addition to that, Mr. Anderson said that he would consult with Phillips and Prudential in determining the interests in the partnership when they were divided, and that Phillips was well aware that it would have to divide the itnerest in the eventual project with Prudential.

Now, the fact that Phillips put its own name on the application for the quota does not mean that there wasn't a joint venture, because Prudential was in a position to do nothing else. The point was that there has to be a company, at least it was told to Prudential that by both Diaz, I believe he testified, and by Chapman, and Chapman's brief to the Interior, or first memorandum to the Interior, January '64, pointed it out, there had to be on the application a firm that had had an import history.

Now, with the fact that Anderson had discussed with Phillips the division of the equities, with the fact that both Phillips and Prudential were proceeding, talking, meeting, in order to obtain the quota, and in addition, the fact that Prudential had first proposed in its financial arrangements that the management group receive something like 27 percent, which Phillips got, Phillips got that, and the fact that Mr. Anderson testified that when he first spoke to Mr. Learned he said, at page 775, "I was asking Mr. Learned if he wanted to join this group in the partnership arrangements or joint arrangement to go into Puerto Rico because I had already told them that unless they got a partner of this size they were wasting their time" -- I think there is enough on the record for a trier of the fact to infer either that there was a joint venture or that

Phillips had held itself out to Prudential as a joint venturer, and therefore was bound as a joint venturer, at least vis-a-vis Prudential.

THE COURT: I don't know that that theory is any good in New York. That partnership by estoppel goes to third parties. That is statutory. It's been held that partnerships are generated in about the same fashion as joi ventures, but I don't think that as between partners that you can have a partnership by estoppel. It is partnership by estoppel when you represent to third parties that the alleged co-partner is in fact a co-partner. I think we hav to get back to some very basic concepts here. You haveto have an agreement.

MR. FARRELL: Your Honor, I think you can infer agreement from what people did and what people did here, I think, on the evidence, as most favorably viewed from the point of view of plaintiff, would allow a trier of fact to infer that there was a joint venture.

You had, for example, Mr. Anderson, who induced Phillips to participate; you had Phillips speaking to the Prudential representatives about the brochure, the things that should be done in order to obtain a quota. You had Mr. Anderson speaking to Mr. Adams at Phillips with respect to the allocation between the parties, and at no tim

until way later was Prudential told that there was no joint venture and that they were out of the picture.

Moreover, even the period after the meeting of July '63, in which Mr. Anderson said he would maintain liason with Phillips, and again that indicated that Phillips was going to proceed with this particular venture, not go off on its own, even then the fact that phillips filed in its own name was consistent with a joint venture, because the object of the joint venture was to get a quota.

The quota was the key here. Without the quota you weren't going to have any petrochemical complex, and if you got the quota, you would. The quota, however, required Phillips to file in its own name. What happened was, once it decided it had to file in its own name, it said, "Why did we need Prudential, although it didn't say that for some time thereafter, but I think at least up until July of '63 or even January '64, you had a joint venture. Whether it was verbalized or not, the intent of the parties was to join forces, to go ahead and get the quota. And everything that Phillips did and everything that Prudential did was designedto reach that objective, and Mr. Anderson said that he would divide equitites between the parties.

That to me is what the record shows, and that to me is sufficient evidence to infer a joint venture, even without an express agreement.

I found no New York cases frankly on the point of whether you can leave the issue of the exact amounts to be decided later.

THE COURT: Where is there evidence that Phillips authorized Anderson to fill in the blanks in this agreement as the percentage?

MR. FARRELL: Testimony of Mr. Anderson.

THE COURT: I don't so read it.

MR. FARRELL: Your Honor, Mr. Anderson testified that he would consult or participate in the division of the equities.

THE COURT: Well --

MR. FARRELL: Now, I will take the most narrow reading of that --

THE COURT: It is awfully narrow, and Mr. Anderson is a member of the bar and he stood here and he testified, and nobody called him on it, and I'm looking at page 760:

"Several times statements were made to me by Mr. Shippe and by others that at some point I would be called upon to make recommendations as to how shares might be divided between various participants based upon what each had contributed to the project."

And then the next question was:

"Q Who are the others? Who besides Mr. Shippee said

to you that the time would come when you would be called upon to?

"THE WITNESS: Mr. Wright, Mr. Willey, Mr. Chapman, Mr. Coan, and I suppose that's about the group."

MR. FARRELL: Your Honor, he testified --

THE COURT: Now, I have no testimony that I could find this morning, when I was looking for this, where Phillips authorized Anderson to fill in the blanks. It is an important blank as to who gets what share of profits and losses.

I'd like to be shown where in Anderson's general retainer or anywhere else that you can get authority on Anderson's part to bind Phillips to a percentage of profits and losses.

MR. FARRELL: Yes. Page 768:

"Mr. Anderson, did you discuss with anyone at Phillips what Phillips' share would be of the propposed petrochemical project?"

THE COURT: Wait just a moment till I find the place.

THE COURT: Top of page 770:

"Simply at some point we would have to sit down and specifically decide how everybody participated in the venture.

"THE COURT: Who is the we in that answer?

"THE WITNESS: We, Adams, Prudential, Shippee, Phillips, Willey, Wright, whoever else was involved in that."

That is at page 770. Let us go on to something else.

MR. FARRELL: That is right, your Honor.

With respect to the testimony of Mr. Rosenthal I think --

THE COURT: I don't think you need to belabor that too much. I think that will present a jury question but I will say to you right now on that the Court will instruct the jury concerning this testimony and how they are to deal with it and if either side wants to submit proposed instructions you may.

I think on some of the testimony he testified to he was clearly competent and correct and well within the analysis of businessmen generally in commercial transactions.

On other things he clearly had no basis and if

they find that he had no basis and find he was testifying merely to conjecture, then it is their duty to give his testimony in that area in which he had no basis, no weight at all.

I am willing to tell the jury that but I am inclined not to strike his testimony, so that particular aspect of the motion you can consider to be denied and I remain open for requests to charge as to the way in which the testimony of both experts is to be handled.

MR. FARRELL: That leaves only the election of remedies, I think.

I submit at this time that we are entitled to not one but two forms of relief assuming that these theories are still in the case.

If a joint venture or a confidential relationship is established -- it need not be a joint venture and there is a case in my brief indicating that a confidential relationship short of a joint venture will justify a constructive trust --

THE COURT: What about the question of adequate remedy at law?

MR. FARRELL: If the jury were instructed, and I think this would probably resolve it to be honest with you, if the jury were instructed that in considering the

damages of the plaintiff they may consider the question of the value of any interest to which it was entitled, if any, and they may consider that in damage, they may consider the profits to which the plaintiff was entitled and which have been denied to it.

And they may consider the projected life of the project and may put a dollar amount on this, discounting it as Mr. Walker would or any reasonable person in a reasonable fashion, then I think we have been made whole and there is an adequate remedy at law.

If in fact the jury is instructed in that fashion I would not pursue my equitable remedies. But if in fact they are not instructed in such a way and told they are only to base the damages between say 1968 and the present, and it is up to the Court to award either interest for the future in the method of an accounting, then I don't think we have an adequate remedy at law.

THE COURT: I don't necessarily adopt your statement of damages. The theory of unjust enrichment looks to what a person taking the concept derived from it, and that is a very shorthand way of saying it.

It is also implicit in the record that the concept was presented with the expectation that payment would be received for it. At one point Anderson talked

about compensation, talking in terms of payment at one point and spoke very carefully, if you read this transcript and he used precise English. It reads much more impressively than it sounded.

MR. FARRELL: I think I agree. I think you are putting too narrow a definition on compensation. I don't think there is anything in the record that indicates that Shippee or Prudential was going to sell this thing like Chapman and get a fee for it. The whole idea of Prudential is an oil company going into this thing. Prudential wasn't a management consultant type company, they wanted to have a project, trying to expand and I really think that would be putting too much stress on a single word, your Honor, in the context of this entire thing.

THE COURT: I understand your position.

MR. FARRELL: That is it, your Honor.

MR. MARKS: May I add one sentence and then I will be quiet?

I think that you might imply an agreement of joint venture where one of the two parties working toward it submits a brochure in which it states that it is going to receive 27 per cent of the equity of the project and the others end up with the majority of it, the jury under

those circumstances could imply an agreement whereby the one joint venturer would get 27 per cent if the other uses that material and goes forward with the project. I think that question may be one that could be left for the trier of the facts.

THE COURT: Very briefly, Mr. MacCrate. The hour is late and I want to talk about some other matters.

MR. MacCRATE: I just wish to call your Honor's attention to several exhibits with respect to this question of the concept.

I submit that if Mr. Farrell's argument as to concept is to be accepted there would be a blanket exclusion from Phillips participatng in any petrochemical complex in Puerto Rico once it had a conversation with Mr. Shippee.

What we find as we go back behind the Shippee activities in the fall of L962, to Exhibit J-21 which is a preliminary evaluation by Mr. Brown of what was there needed. His statement at the bottom of page 8 to the top of page 9, of the necessity for commitments to take petrochemical raw materials in Puerto Rico and the same notion is picked up when Mr. Brown went to Phillips in May of 1962 and, in J-31, at the bottom of the first page

he says:

"It appears to me that a new Puerto Rican refinery project including an actual petrochemical operation as an integral part might have some chance of securing an oil import quota."

He points to Phillips as one who is both a refiner-marketer and a petrochemical manufacturer as a natural sponsor and developer of such a program.

What happened in the Phillips proposal and what is the heart of the Phillips core proposal are the commitments to build satellite plants and when you build a $100 million plant as a satellite in fulfilment of a commitment, you are doing exactly what Mr. Brown was visualizing and what Phillips undertook to do.

THE COURT: That argument I think goes directly to an issue of fact because what you have just said is contradictory to the sworn testimony of some of the plaintiff's witnesses, isn't that so?

MR. MacCRATE: I don't believe so, your Honor.

THE COURT: They say they initiated and originated this matter and took it to Phillips. This exhibits suggests that Brown did so but that is an issue of fact, whether you believe the exhibit or believe the witnesses.

MR. MacCRATE: This is a stipulated exhibit. This is the very accepted bedrock of the case and what appears from this is that Brown in 1961 was reflecting in fact that what he did was talked about all along and the whole notion is to develop an industry there that will multiply and with all the dependent industry and where you have as a stipulated exhibit a statement --

THE COURT: The weight to be given to the exhibit is not stipulated. What is stipulated is that it is admissible in evidence and genuine but the weight to be given to any exhibit is a question for the trier of the facts.

MR. MacCRATE: Is it a fact, your Honor, if one says I invented the wheel? If the wheel exists and you just don't make it your invention or you make any probative evidence that you invented the wheel by saying you invented the wheel and where in existent documents that are part of the plaintiff's case it so appears there was a wheel prior to that time, I don't think that that fact can be changed simply by an assertion I invented it.

THE COURT: I heard enough for today. Will you gentlemen step inside briefly?

(Adjourned to Friday, January 16, 1976, at 10.30 o'clock a.m.)

PRUDENTIAL OIL CORPORATION

vs. 67 Civ 3748

PHILLIPS PETROLEUM COMPANY

January 16, 1976
10:50 a.m.

- - -

(Trial resumed.)

(Jury not present.)

MR. FARRELL: Your Honor, I had two points to make before we start with the jury.

Yesterday, Mr. MacCrate, cited Allen & Co. against Occidental Petroleum Corporation; the Court of Appeals decision. We had shepardized that case, but it did not appear in the January sheperds, and at the time that we had prepared our brief, that case was not in it.

However, I believe that footnote 1 on page 789 --

THE COURT: I have read that footnote.

MR. FARRELL: Thank you, your Honor.

I wanted to call your attention to it, because we did cite the Lord against Pathe case in our brief.

THE COURT: I have read that number.

MR. FARRELL: Secondly, a colloquy between the Court and me yesterday raised a point this morning in my mind when I read it. On page 1235 we were talking

about --

THE COURT: Wait just a moment and let me get 1235. Everything said in colloquy doesn't have to be taken as written in stone, you know.

MR. FARRELL: I understand, your Honor.

THE COURT: What line number?

MR. FARRELL: I'm simply talking about line 19, the measure of damages.

THE COURT: Well, it is premature for measure of damages, isn't it?

MR. FARRELL: I wanted to point out,your Honor, that we could not intelligently elect remedies, unless we had the financial statements from Puerto Rico Core for '73, '74 and '75 available.

THE COURT: Precisely what do you mean when you say "elect remedies?"

MR. FARRELL: Your Honor, I say in the event that remedies are inconsistent -- and I'm not sure they are in this case --

THE COURT: Which are they?

MR. FARRELL: I don't think there are any, but Mr. MacCrate keeps raising them, and your Honor, I say this with respect, I keep worrying that some day you're going to say to me, "You're going to have to elect your remedies."

THE COURT: I don't think you're going to have to elect your remedies.

All right. At this time I am prepared --

MR. FARRELL: In any event, I just wanted to make it clear that we did want those statements. I think we also need it for cross examining defendant's experts.

THE COURT: You have them.

MR. FARRELL: Not for '73, '74 and '75, your Honor. There was a cut off date of '72.

THE COURT: I will have to take that up with you later, that particular question, as to whether you can discover those.

MR. FARRELL: Thank you.

THE COURT: At this time I am prepared to make any rulings on the record on the motions presently before me.

At this time, the Court dismisses so much of the legal claim of plaintiff as is based on the theory that a joint venture existed between it and the defendant. On the evidence in this case, a joint venture consisting of Prudential Oil of Connecticut and Phillips, or Phillips and Messrs. Shippee, Willey and Young, acting directly or through Prudential Connecticut has not been shown to exist by the required standard of proof which resolving all

matters of credibility or weight of the evidence favorably to plaintiff would permit any reasonable juror so to conclude.

Primarily a joint venture arises by agreement. To create a joint venture, the parties must intend to enter into such a relationship. Of course, the objective appearance or actions which convey intention to do so, are sufficient, even if subjectively the person whose case is being considered does not intend to be bound as a party to a joint venture. But as between the parties, a contract is essential to create the relationship of joint venturers.

The joint venture is not a status created or imposed by law, but it is a relationship voluntarily assumed and arising solely by contract, express or implied.

Like all contracts, the principal provisions thereof must have been agreed to with sufficient certainty to permit enforcement of the contract, although it is true that some aspects of a joint venture may be settled by custom or by implied agreement. An agreement to agree is no contract.

For a joint venture to exist, the agreement establishing it must at the very least provide for respective contributions by the two claimed joint venturers of money, property, effort, knowledge, skill or other assets,

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to a common undertaking. There must be agreement with respect to a joint property interest in the subject matter of the venture, and a right of mutual control or management of the enterprise, a right to participate in the profits and an agreement to share in the losses. Of course it is to be understood that the parties could agree that the share of one party in the losses might be zero, but at least this matter is an essential element of the bargain by which a joint venture comes into existence.

A joint venture will not fail merely because the parties left some elements open, but the failure to decide so many critical elements as is found here, is conclusive evidence that Phillips never intended to enter into a joint venture with Prudential. Specifically, Phillips never authorized Anderson, and there is no evidence that it ever authorized Anderson, to commit Phillips to enter into a joint venture with Prudential, or to fix Phillips' share of such joint venture.

And there is no evidence which would justify such a conclusion by any reasonable juror.

There is a total absence of any agreement as to the sharing of profits. Mr. Rosenthal, the plaintiff's witness, testified, and I credit his testimony, that normally it is a matter of negotiation what the sharing of

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profits will be.

When promoters join to effectuate an undertaking and that the percentage to be allocated to any promotor in any transaction cannot be determined from prior dealings between the parties, and there were none of those here, or from customary usage in the trade. At best, the testimony of Anderson and Shippee establish that Anderson had been delegated to make a non-binding recommendation as to shares in the project, to be awarded to the respective participants.

All the proof here shows is that Prudential offered to join Phillips in promoting a corporation to be formed in Puerto Rico, tentatively referred to as PROPCO, in return for 27-1/2 percent of the stock. That offer was never accepted by Phillips, and there is no evidence of any such acceptance from which a juror, thinking reasonably, could find that an agreement of that sort came into existence.

Those who together promote a corporation do not in so doing, generally create a joint venture or partnership among themselves, unless they show a clear intention to do so.

It is of no concern on this point whether some uncertainty exists as to the interests that the individuals

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Shippee, Willey and Young had or have presently in Prudential, nor is the absence of an apparent agreement on their part that Mr. Anderson or somebody else would allocate their share in Prudential's proceeds of the claimed venture of any significance in this aspect of the case.

Those reasons are sufficient to support the conclusion of the Court, but there is another aspect of the joint venture which has not been discussed, and a wholly separate ground which the Court is relying on, although, as I indicate to you, the foregoing ground is sufficient standing alone to justify the Court's resolution of this aspect of the various motions made yesterday by the defendant.

In this case, according to plaintiff's own evidence, persons acting for Prudential had suggested that Phillips apply to the Department of the Interior for an oil import quota and that this application be made in Phillips' own name with Prudential to be an undisclosed participant in some fashion in the financial benefits which that oil import quota permit would carry with itself.

It was clearly shown that that suggestion was made to Phillips in behalf of Prudential and considered by those acting for Prudential to be an important part of the arrangement they wished to undertake.

The evidence shows that the identity of the applicant was considered material by the officials charged with issuing the permit and indeed in presentations made to the Oil Import Board, PHillips has described in some detail its experience and its other activities in the field of petrochemicals, and its other facilties and its prior importation history as well as its particular expertise in the industry.

It was conceded by plaintiff's witnesses that an applicant having such stature or standing or experience was necessary to obtain the permit.

In my opinion it would have been unlawful, against public policy and fraudulent for Phillips to have agreed with Prudential or anyone else, if indeed it did so, that Phillips would make an application in its own name for an oil import quota for Puerto Rico under the circumstances of this case and do so for the benefit of itself together with Prudential or PROPCO or other non-Phillips corporate entities as undisclosed principals.

The Court notes that later on, when it was determined that PRIDCO would have an interest in the Phillips core plant in Puerto Rico, and that the permit would be issued to the Phillips core corporation in Puerto Rico, a subsidiary to be owned partly by PRIDCO and partly by

Phillips, that this was fully disclosed to the Department of Interior and an amendment was made in the proceedings before that Department.

But an agreement for a joint venture by which one joint venturer would be an undisclosed participant in the obtaining of an oil import quota under the circumstances contended in this case would be fraudulent in nature and contravene public policy, and would require an imposition of fraud on the Oil Import Board and for those reasons would not be enforcible in this court even if there were any competent evidence to show that such a joint venture had been formed or agreed to by Phillips.

As I noted before, I state this as additional and separate grounds for the foregoing ruling:

The Court also dismisses the equitable claim for relief by reason of a failure on the part of the plaintiff to prove that it is entitled to any equitable relief. Specifically, I find that the plaintiff has an adequate remedy at law and also that there is no identifiable res presently existing in which the Court might properly impress a trust. The parties did not specify, expressly or impliedly the percentage interest which plaintiff was to have in the core plant.

A court of equity will not write or rewrite a

contract for the parties. Subsequent changes in circumstances, notably the activities of OPEC and the increase in the price of import oil, appear to have made the oil import quota permit almost worthless, and it would be inequitable and unnecessary at this time to impress a trust on an undivided interest in the plant, or a minority interest in the stock of Phillips' core subsidiary in order to reach the import quota, even if a percentage had been agreed to.

Any such remedy would also be illusory and inequitable in view of the lack of marketability of a minority interest in a Phillips subsidiary, the stock of which is not publicly traded, and the fact that the parties, here in this litigation, if they are not presently irreconcilably in conflict with each other, would soon become so after any such decree had been entered.

Ordinarily, equity will not compel a person to become or continue to be a partner or joint venturer with another against his wishes, and the reason for this is so obvious that I will not go into them at this time.

To impress any such trust or grant any such equitable releif would have the effect of compelling Phillips and Prudential to become jointly engaged in investment in the Phillips core plant in Puerto Rico, either as

shareholders together or in any other form, and this would be inequitable under the circumstances of this case.

Now, as to the equitable side of this litigation, the Court reserves the right to make further, more formal findings of fact, and to state additional conclusions of law on the record after the trial, and I will do so if requested in writing by any party on notice to the other party in order that your record here may be complete. But for the present, it is adequate to state that all equitable relief is denied for failure to prove a prima facie case entitling plaintiff thereto.

Now, yesterday I denied the motion to strike the testimony of Mr. Rosenthal and I adhere to that ruling.

With regard to the additional question of whether plaintiff is a proper party to bring the claim or specifically, whether there are others who are necessary or indispensible parties, I find that Prudential is a proper party to bring the claims insofar as they are derived from the activities of Willey, Shippee or Young acting together or separately.

The proof shows clearly that each of these people made it abundantly clear to Phillips at all times that they were acting through and on behalf of a corporate vehicle, Prudential Connecticut. There is adequate

documentation to permit the jury to find that Prudential Connecticut's rights against Phillips, whatever they may be, were assigned to the instant plaintiff, Prudential New York.

The problem of indispensibility has as its principal aspect the possibility that Phillips might be subjected to multiple or conflicting claims and denied the benefit of res judicata or estoppel by judgment flowing from this litigation.

I find that on this trial record, Messrs. Shippee, Willey and Young, having testified for the plaintiff and having represented to this Court and jury both expressly and impliedly by their acts that the plaintiff in this action was a proper party to enforce their claims arising out of the concept sued on, are estopped to assert independent or separate claims against Phillips, following the resolution of this lawsuit.

Furthermore, it appears that any such claims are barred in any event by limitations.

Prudential is not a proper party to assert any claim arising out of the efforts of Anderson, Chapman or Coan. To the extent that any of these persons developed or had a concept or contributed toward doing so, at the very least it appears that Prudential has no nexus with such rights, and is not the successor in interest of any claims which Chapman, Coan or Anderson had, and it also clearly appears on the record that Anderson, Chapman and Coan were already separately compensated and dealt separately in their own right with Phillips.

The Court will anticipate instructing the jury in their computation of damages that they may not consider the activities of Chapman, Anderson or Coan in determining Prudential's damages, if any. They may not consider the value of any activities to Phillips of any of these three people.

Now, I previously indicated and now reiterate the fact that the plaintiff is to be demed to have set forth its claims here in suit in its statement of what the concept was, previously made on the record here by plaintiff's counsel at pages 1103 and 1104. Plaintiff is to be held to that particular concept and if plaintiff is to recover it must appear after all the evidence in this trial is complete, that such concept was originated by

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Messrs. Willey, Shippey and Young, acting for Prudential Connecticut, and that Prudential, through its various officers and employees, tendered this original concept created by them and not by others, to defendant under such circumstances as to warrant a finding either that there was no express or implied contract, but such a situation between the parties that it would be inequitable by virtue of breach of confidence or similar ethical violation, for defendant to profit from the use of the material.

This is a so-called quasi-contract theory and I find that plaintiff's case, if its witnesses are believed, and if full weight is given to the evidence, is sufficient to support a recovery based on quasi-contract to allow money damages for defendant's unjust enrichment from the use of the material, if any, originated and furnished by plaintiff.

The evidence is also sufficient to establish a contract implied in fact in that the parties in their dealings with each other with respect to the subject matter understood that if Phillips used the plaintiff's concept and material, it would be obligated to pay what it was reasonably worth. Neither Prudential nor its principals were acting as volunteers in the circumstances, and upon that understanding, if Phillips did use the material and

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this arrangement was arrived at not by express words but by such conduct, looked at in the context of the trade and their familiarity with it, all this would make it clear that such was the understanding they reached, that is, to say implied contract in fact.

This theory of a contract implied in fact, as contrasted with a contract implied in law, is not specifically pleaded, and indeed, the contrary is pleaded, but if requested, because I believe that the record as developed on the trial would support either theory of implied contract, I would permit the plaintiff to be deemed 4t have amended its pleadings pursuant to Rule 15(b) of the Federal Rules of Civil Procedure to conform with the New York case of Robbins v. Frank Cooper Associates, 19 A.D. 2d 242, 241 Sub. 2d 259 deciced by the First Department in 1963. That decision was reversed on other grounds, but has been cited with respect to the issue of damages in a great many later cases, and at least in that area it correctly states the law.

As to whether the concept assuming that Prudential did develop it, was legally protected material, an argument which the defendant made in its motion, the Court rejects that suggested basis for the granting of any relief by motion here. The Court regards the question

of whether the concept rises to the level of legally protected material as being a fact question for the jury to determine, and in dealing with these motions I do not address myself in any way to the question of whether or not the concept was original with these plaintiffs or whether it was conceived by somebody else, or whether it rises to the level of property having value in sufficiently concrete form so as to give rise to an action for its appropriation for profit upon the theory of an implied contract or the tort of misappropriation.

Plaintiff's evidence raises questions for the jury's consideration on these theories and plaintiff has adduced sufficient evidence from which a reasonable juror could conclude that Prudential disclosed this information in a relationship of trust and confidence and thereafter Phillips made use of this idea to its own benefit. It will be for the jury to determine whether Phillips did in fact use the Prudential idea but there is no requirement that use be made of the idea in the precise form in which it was disclosed.

In so far as Phillips improved the idea and implemented it in its improved form, defendant may adduce proof showing the improvements which it made and the jury may be instructed that a portion of the success of this

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project must be attributed to Phillips' development of the project in computing any damages which it may award.

The foregoing constitutes the rulings of the Court with respect to the motions. I believe I have covered everything and I would like to go forward with the defendant's case at this time unless there is some matter which the Court omitted to cover. The jury has been waiting for some time and I do want to continue.

MR. FARRELL: Your Honor, in response to your invitation I move to amend the pleadings of a theory of contract implied in fact and I so move.

MR. MacCRATE: I respectfully except.

THE COURT: To all the rulings not granting your motion or talking about the right to conform to the proof?

MR. MacCRATE: I am taking exception to the amendment.

THE COURT: All right, I will grant the amendment and I will instruct the jury on the issue of the implied contract in fact. Assuming there is no showing in the course of defendant's case which warrants a different ruling.

MR. MacCRATE: I also take exception to your Honor's denial of our motion to dismiss the balance of the

complaint.

THE COURT: You may have an exception.

MR. MacCRATE: As to the Court's ruling with respect to the proper party, the name of Wright I do not believe was mentioned by the Court.

THE COURT: That is true, Mr. MacCrate, and I should have asserted it with regard to Mr. Wright. I believe Mr. Wright stands in the same position as Mr. Anderson in this regard. The Court understands Mr. Wright was an associate of Mr. Anderson and, in any event, there is no evidence suggesting that plaintiff is a successor in interest of Wright or has standing to assert Wright's claims or that Wright has assigned any rights to the plawintiff here.

I think the same rationale applied to Anderson extended to Wright. I would say further that I do not recall that Mr. Wright made any significant contribution with regard to the concept.

Perhaps I am mistaken in that regard but I would include Mr. Wright within the scope of the ruling the same as Anderson.

MR. FARRELL: Just for the record I would except to your rulings.

THE COURT: You may have an exception.

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Bring in the jury and we will go forward with the defendant's case.

It is also clear there is nothing left to elect, as to the problem of election of remedies.

MR. FARRELL: Yes, your Honor, that would mean I would be entitled to those financial statements.

THE COURT: I will take that up with you a little later. That may be so.

(Continued on next page.)

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(Jury present.)

THE COURT: Members of the jury, the plaintiff's contention that it had entered into a joint venture with the defendant, Phillips Petroleum Corporation, is no longer before you for your decision.

There remains before you the question of whether the plaintiff has proved by a preponderance of the credible evidence that it conceived a legally protected concept -- and that's something I'll define and explain to you at the end of the case -- and whether the defendant acquired the benefit of this concept or idea by virtue of a breach of confidence, or did so tortiously, or did so as a result of any implied agreement, and whether the plaintiff was damaged thereby.

Those questions all remain before you, and I will explain them further in much greater detail for you at the end of the case.

However, at this time there is nothing before you to decide concerning the claim of joint venture. So you are not to speculate about my reasons for reaching this decision or making this direction, and I assure you that this matter relates solely to legal questions, matters of law, which are not of your concern as jurors in this case.

You will now try solely the issues which I just

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mentioned, which do remain open, and at this time the defendnat will go forward with its witnesses and evidence in this case.

All right, Mr. MacCrate, you may call a witness.

MR. MacCRATE: Mr. Sam J. Van Hyning.

S A M J O H N V A N H Y N I N G, JR.,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MacCRATE:

Q Mr. Van Hyning, what is your present occupation?

A I am an economic consultant working in San Juan, Puerto Rico.

Q For what period of time have you been an economic consultant in San Juan?

A From mid '69 until the present.

Q How long have you lived in San Juan, Puerto Rico?

A I took up residence in San Juan in September, 1956.

Q Would you trace for us your education and employment experience, just chronologically?

A I entered a public elementary rural school about ten miles from Kenton, Ohio, in the fall of 1921.

Some three months later, my parents moved to Portland, Oregon. I attended public elementary school in Portland, Oregon, and entered a public high school, Washington High School in Portland, Oregon, in the fall of 1928.

I was graduated from Washington High School in June of 1932.

I was matriculated at Reed College, a private liberal arts college in Portland in September, 1932.

I was graduated from Reed College in June of 1936.

I was matriculated at Oxford University, Oxford, England, in October 1937.

I was a resident at Pembrooke College, Oxford University until November, 1939.

I returned to the United States during that month and entered the University of Chicago in January, 1940.

Q Did you complete your studies in Chicago?

A I did not.

Q What did you do following your term at the University of Chicago?

A I returned to Portland, Oregon and in September, 1940, I began to teach at a private high school in Portland, Oregon.

Q Did there come a time when you went to Washington D.C.?

A Yes, sir. I accepted a position in Washington, in I believe October, 1941, and reported for duty in December, 1941.

Q What position was that?

A That was a position as economist with an agency known as the Office of Coordinator of Information.

Q Was the name of that agency subsequently changed?

A Yes, sir. I think it was in June 1942, I can't be certain of the date, that it became known as the Office of Strategic Services.

Q And you were with the Office of Strategic Services during World War II for a period?

A That is correct.

Q And what was your next position?

A In the fall of 1944, I imagine it was September, I was transferred by the Office of Strategic Services to the War Shipping Administration.

Q Did you serve there as an economist?

A That is correct.

Q And what was your next assignment?

A I believe it would have been in February, March 1946, that I moved to the U.S. Department of State.

Q And for what period were you in the United States Department of State?

A Until September, 1947.

Q What did you next do?

A I was loaned by the Department of State to work on the Secretariat of a special group known as the President's Committee on Foreign Aid.

Q And did the Marshall Plan develop out of the study of that committee?

A That is correct. The committee was appointed by President Truman in the summer of 1947, following General Marshall's speech I believe at Harvard earlier in the year. It rendered its report to the President in November of 1947.

Q And that was implemented in due course, the Marshall Plan was established, and what was the agency known as that administered the Marshall Plan?

A The Economic Cooperation Administration which was authorized by the Congress I believe in April of 1948.

Q And did you in due course become associated with

ECA?

A Yes, I was, at the time of the authorization of the Economic Cooperation Administration, on the payroll of the U.S. Department of Commerce, and an arrangement was made whereby the Economic Cooperation Administration, as it were, borrowed me from the United States Department of Commerce.

Q And you worked in ECA for a period, and following that, what was your next employment?

A The transfer arrangement that I have just described was terminated, and I went on the regular payroll of the --

Q I don't think we have to pause on the payrolls, Mr. Van Hyning.

A Sorry.

Q You were with ECA for what period of time?

A From its inception in April '48 until its expiration on the 31st of December, 1951.

Q And what did you next do?

A I next took a position with the Ford Foundation beginning January of '52.

Q Serving the Ford Foundation as an economist?

A As an economic adviser to the Ford Foundation.

Q Following your service with the Ford Foundation,

did you have another position?

A Yes, sir. Beginning, I believe, late '52, early '53, I had a position with the Center for International Studies, Massachusetts Institute of Technology.

Q And in what activity were you there engaged?

A It was, so far as I was concerned, working in the field of international trade and payments.

Q Did there come a time when you were with the National Planning Association?

A That is correct. I took a position with the Planning Association in the summer of 1954.

Q And didyou work on studies while you were with the Planning Association?

A That is correct. The project that I was associated with was concerned with the prospects for the peaceful uses of nuclear energy.

Q And following your service with the National Planning Association, what was your next employment?

A My next employment was as a consultant to the Economic Development Administration, San Juan, Puerto Rico.

Q And that is the time that you moved to San Juan in 1956 that you previously indicated?

A That is correct.

Q And what were your duties with EDA?

A My duties were to serve as an economic adviser to the Administration on assignment both from my immediate supervisor, Mr. H.C. Barton, Jr., or directly on assignment from the administrator.

Q When you arrived at EDA, who was the administrator?

A Teodoro Moscoso.

Q And for what period of time was Teodoro Moscoso the administrator of EDA?

THE COURT: Isn't that all stipulated in the pretrial order?

MR. MacCRATE: Yes, I believe it is, your Honor. I was just relating this witness' activities.

THE COURT: All right.

When did you leave the EDA?

THE WITNESS: In the summer of 1969.

THE COURT: And what are you doing now?

THE WITNESS: I'm an economic consultant on my own in San Juan.

Q Could you describe for the period 1957 to 1960 some of the responsibilities you discharged at EDA?

A I worked, of course, in the area of petroleum refining. I worked on the matter of telephone service in Puerto Rico.

Q In connection with petroleum refining, did you work on any particular assignments?

A My first assignment in the field of petroleum refining came early in 1957, and it resulted --

Q What was that assignment, Mr. Van Hyning?

A It resulted from the fact that one of the two then existing refineries, the Commonwealth Oil Refining Company, was in serious difficulty. At the same time, an assignment of a wholly different order was given to me and that related to the fact that it looked as if the United States government would in the very near future impose controls on imports of foreign oil into the United States, including Puerto Rico.

Q What did you do with respect to Commonwealth Oil Refining Company?

A The situation at Commonwealth Oil reached what I would describe as crisis proportions. Early in the summer of 1957, the Economic Development Administration and the Government Development Bank for the Commonwealth of Puerto Rico examined the affairs of Commonwealth with a view to seeing what could be done to insure the continuing operation of the company.

I participated in numerous meetings in San Juan involving personnel not only from the Development

Administration, but also from the Government Development Bank.

Q And you participated in the development of a program to help Commonwealth Oil?

A That is correct.

Q And with respect to the prospect of oil import controls, what did you do in that regard?

A I prepared in the early summer of 1957 an appraisal of the outlook for the imposition of controls. That paper was, I recall, the basis for a meeting held in August, 1957, in Mr. Teodoro Moscoso's office.

Also present at that meeting in Mr. Moscoso's office was Mr. Abe Fortas.

Q Was Mr. Fortas counsel for EDA?

A There was a contract between the Commonwealth and the Washington law firm of Arnold, Fortas & Porter, and the firm of Arnold, Fortas & Porter served as Washington legal counsel to the Commonwealth government.

Q And during this period, 1957, you worked with Mr. Moscoso and Mr. Fortas with respect to the problems arising out of threatened oil import regulations?

MR. FARRELL: Your Honor, if you please, I object. I think we are going very slowly and very far afield, at this point.

THE COURT: Well, is this witness being offered as an expert in the field of petroleum industry in Puerto Rico?

MR. MacCRATE: Yes, your Honor. He has a comprehensive knowledge in this area, and I would like to bring out what he did with respect to the oil import program.

THE COURT: Well, let's get through it as briefly as we can. He's being offered as an expert witness. If he is being offered only as a fact witness, I think we have already had sufficient. But go ahead. Try to expedite it if you can.

MR. FARRELL: Your Honor, if he's being offered as an expert, which is the first I heard of it, we would want voir dire.

THE COURT: When Mr. MacCrate finishes.

MR. FARRELL: I just wanted to say that before he went into the other parts of the testimony.

THE COURT: It is not timely at this point.

Q In connection with the proposed oil import program in 1957, what was the status of imports into Puerto Rico of oil at that time?

A Uncontrolled.

Q And what was your evaluation of the effect upon

Puerto Rico of controls?

A It was my opinion that the imposition of controls would certainly seriously impair opportunities for increased activity in the area of petroleum refining.

Q Was there interest in the Puerto Rican government at that time with respect to development in the petroleum field?

A Yes. When I arrived in September of 1956 I found that there was great enthusiasm within the Development Administration as to prospects for growth via additional imports of petroleum.

Q Was the interest of the Puerto Rican government in this development reflected in public pronouncements at that time with which you were acquainted?

A Not official pronouncements by the Commonwealth government as such, no.

Q Were you aware of statements made by various representatives of the Commonwealth Government in that regard?

MR. FARRELL: I object to that, your Honor.

THE COURT: Whether he personally was aware? It is a preliminary question. Of the various statements? I will allow it. He can answer yes or no, was he aware of the statements.

Q Were you aware of this?

A Yes.

Q Were you aware of a paper, Defendant's Exhibit 8 for identification which I show to you?

A Yes, sir.

THE COURT: The answer is yes he was aware of it. At what point in time, at or about the date it bears?

THE WITNESS: That is correct.

THE COURT: All right.

Q What was your knowledge of this paper at that time?

A As I said, I had gone over it in draft.

Q You went over this paper in draft at that time?

A That is correct.

Q By whom was the paper delivered?

A Mr. H. C. Barton.

Q Who was he?

A Director of operations of Economic Research, Economic Development Administration.

MR. MacCRATE: I move Defendant's Exhibit 8 in evidence.

MR. FARRELL: I object to this, your Honor.

MR. MacCRATE: I draw the Court's attention particularly to pages 10 and 11.

THE COURT: I will take the objection at the side bar.

(At the side bar.)

THE COURT: What is the basis of the objection?

MR. FARRELL: Your Honor, it is entirely unclear to me at this point whether he is being qualified as an expert or for the purpose of introducing this exhibit or asking even these questions. Since he is both apparently a factual witness and now an expert witness the questions are all hashed up and I don't know the purpose of it. Obviously it is clear that --

THE COURT: He wrote this paper.

MR. MacCRATE: He came in after and worked on the paper.

THE COURT: If he worked on the paper and you establish the date, which is February 2, 1957 and it pertains

to the establishment of a refinery in Puerto Rico, I would think it would become admissible.

MR. FARRELL: Your Honor, if it is shown --

THE COURT: He is trying to show prior art, that is what they are doing. He is trying a patent case. I think it is admissible.

Is that what you are trying to show?

MR. MacCRATE: Precisely.

THE COURT: I don't know whether I have to take the entire paper. I will take the parts relating to petroleum.

MR. McCRATE: There are various parts of the paper where the idea is reflected. I pointed out the focus of it.

THE COURT: All right.

(In open court.)

THE COURT: I overrule the objection.

(Defendant's Exhibit 8 for identification was received in evidence.)

MR. MacCRATE: I would like to read briefly from the document commencing at the middle of page 9.

(Exhibit read from.)

Q Mr. Van Hyning, with respect to these plants and prospects that were being talked about with respect to oil

and petrochemicals in Puerto Rico, what was the relation of possible oil import regulations?

MR. FARRELL: I object to this unless we have a time frame for the question.

THE COURT: All right, fix a time.

Q In 1957, 1958.

A If the prospects there outlined were to be realized it would require access on an expanding scale to petroleum feedstocks.

Q Did the Puerto Rican Government take any action with respect to the possibility of oil import regulations being imposed?

A I think I referred to this meeting in Mr. Moscoso's office at which Mr. Fortas was present. The paper that I had prepared posed the question of policy on the part of the Commonwealth Government in the event that United States moved toward imposition of controls, should the Commonwealth Government remain silent or should it fight the imposition of controls.

That question of policy on the recommendation of Mr. Fortas as discussed at that meeting, the Commonwealth Government should not fight the imposition of controls.

Q Did the Commonwealth Government thereafter take any further action with respect to the threatened program of

import controls?

A In September 1957 with retroactive effect to July 1, 1957, the United States Government established what was known as a voluntary oil import program. Puerto Rico was not included in that program.

Q So there was no regulation under the voluntary program of imports into Puerto Rico?

A There was no limitation imposed on Puerto Rico.

Q Did there come a time when import regulation was imposed?

A Yes, but not under the voluntary program. That came later, in March of 1959, when mandatory controls were established.

Q Prior to the time thawt the mandatory controls came in in March of 1959, did the Puerto Rican Government take any action in anticipation of those regulations coming into effect?

A Yes, sir.

Q What did it do?

A In late January or early February of 1958, the then Administrator of the voluntary import program was asked during a press conference why Puerto Rico had not been included under this voluntary import program.

The Administrator replied to the questioner

that he did not know but he would endeavor to find out why Puerto Rico had not been included.

Upon learning of this response by the Administrator during his press conference, Mr. Moscoso communicated with Mr. Fortas and asked Mr. Fortas to try to set up a meeting with the Administrator of the voluntary oil import program.

Q Thereafter was there such a meeting?

A Such a meeting took place.

Q Did you attend that meeting?

A Yes, sir.

Q What position did the representative of the Commonwealth take in that meeting with Captain Carson?

A The position taken was that Puerto Rico needed a continuing flow on an increasing basis of petroleum in order to strengthen its industrial base. It was a generalized meeting, no specific projects, as I recall, were discussed.

Q Were there further meetings held in Washington or other action taken with respect to the proposed mandatory regulation of oil imports?

A There was a series of meetings in San Juan as I recall at the end of summer, 1958.

Q Was a Commonwealth position taken as a result

of such meetings?

A Yes, sir.

Q What was that position?

A The position was, and I am referring now to discussions with Captain Carson, the Administrator, that the Commonwealth Government would like an opportunity to comment in advance on any proposed mandatory regulation that might be established.

Q Was the Commonwealth Government subsequently afforded such an opportunity?

A Yes, sir.

Q What comments did the Commonwealth Government make?

A It commented on the appropriate base period, the yardstick by which allocations under the mandatory program would be imposed.

Q Was any consideration given to the question of whether a distinction would be drawn between crude oil imports and unfinished oils?

A Yes. We on behalf of the Commonwealth Government requested that the holder of an import license to bring materials into Puerto Rico should be limited in no way as to the amount of material that would be in the form of so-called unfinished oil.

THE COURT: As contrasted with crude oil?

THE WITNESS: That is correct, sir.

Q Was that suggestion accepted?

A Yes, sir.

Q And that was a suggestion peculiar to the regulation of imports into Puerto Rico?

MR. FARRELL: Objection, your Honor, to the form. It is leading.

THE COURT: That means unique.

MR. FARRELL: It is leading.

THE COURT: I suppose it is leading.

Reframe the question.

MR. MadCRATE: I'm simply to expedite, your Honor.

THE COURT: I understand. It is a valid objection.

Q Mr. Van Hyning, the concept that we have just referred to, was it incorporated into the mandatory program when it was placed in effect in March of 1959?

A Yes, sir.

Q Did it apply to all districts that were regulated under the oil import program or only to certain districts?

A As I recall, the regulations in this matter were

identical in District 1 through 4 and in District 5.

THE COURT: Which district was Puerto Rico in?

THE WITNESS: It was a separate import district, sir.

THE COURT: Which number was that?

THE WITNESS: No number.

Q Was there provision in the oil import regulation with respect to the Puerto Rican district applicable in the other districts?

A No, sir.

Q What was the effect of the imposition of the mandatory oil import program in March, 1959 upon the existing refineries in Puerto Rico?

A The quotas assigned to the two existing refineries enabled them to continue operations at then capacity levels of the individual plants.

THE COURT: Talking about physical capacity?

THE WITNESS: Yes, sir.

Q Did any special problems arise for any of the existing facilities because of the mandatory controls?

A Yes, sir.

Q What were the problems?

A The problem arose in the case of the Commonwealth Oil Refining Company which at this time was beginning a

substantial physical revamping of the plant. The company was not physically able to process the amount of the crude permitted under the control system.

Q Did this have an effect on other businesses in Puerto Rico?

A No, sir.

Q Was there any facility that drew on the Commonwealth Refinery at that time?

A Do you mean facility in Puerto Rico?

Q Yes. Did this occasion any problem for Union Carbide?

A Yes, but not at that immediate time.

Q That came at a later time?

A Yes, as I recall, Union Carbide --

Q What was the nature of the problem?

A -- try to go on stream I would date it mid-1959, July-August. And then a problem arose.

Q What was that problem?

A The Commonwealth Oil Refining Company and Union Carbide had -- and I can't date this -- entered into a long-term, I believe 20 years, long-term contract whereby Commonwealth Oil would sell to Union Carbide refinery gases which would be utilized by Carbide as feedstock for their petrochemical operation.

The Commonwealth Oil Refining Company could not meet the minimum, let alone the maximum, terms of that contrawct.

(Continued on next page.)

Q Could not make delivery?

A Could not make delivery, correct, sir.

Q And did the Commonwealth Government take any action to help Union Carbide get feedstock for their petrochemical operation?

A Yes, sir.

Q And what did they do?

A Representatives of the Commonwealth Government, myself included, negotiated with the Oil Import Administration in Washington, Captain Carson, the Administrator, Mr. Thomas Snediker, his deputy, Mr. Robert Long, his counsel, in an effort to work out, I guess what could be called emergency allocations for Carbide so that its plant could operate.

Q Did there come a time when a third refinery was discussed within the Puerto Rican Government?

A There had been discussions within the Economic Development Administration of promoting additional refineries. They were going on, as a matter of fact, at the time when I first came to work for the Development Administration in September '56.

Q Well, during the period from 1956 to 1960, was there any affirmative action being taken to encourage a third refinery to locate in Puerto Rico?

A Between 1956 and the end of 1960?

Q Yes.

A Not to my knowledge.

Q Why not?

A The basic reason was that during most of this period Commonwealth Oil was in severe financial difficulties and it was judged prudent not to take active steps to encourage additional refineries to locate in Puerto Rico until the financial problems of Commonwealth Oil had been resolve.d

Q And about at what time were the financial problems resolved, if they were?

A They were resolved and I would date that resolution as of about mid-1960.

Q Did the resolution of the financial problems of Commonwealth Oil have an effect upon what the Commonwealth Government thereafter did with respect to seeking a third refinery?

A Yes, sir.

Q And what was done?

A Beginning in the first half of 1961, an active promotional effort by the Economic Development Administration was initiated in an effort to try to attract additional companies to manufacture in Puerto Rico.

Q Was there a particular objective of that promotional effort as to the kind of business the Commonwealth sought to attract?

A Yes, sir.

Q What was that?

A The particular feature sought by the Commonwealth Government in its promotional efforts was to attract a refinery which would be petrochemically oriented rather than the conventional type of a refinery represented by the then-two existing plants, Caribbean and Commonwealth Oil Refining Company.

Q And what was the reason that a petrochemically oriented refinery was sought?

A Negatively, the two existing refineries generated a substantial surplus.

Q Surplus? What was the word?

A A substantial surplus of conventional petroleum products, from gasoline all the way down the scale to heavy fuels.

Positively, a different type of refinery, differ- from the two-then existing, was sought because only in this way could you get the opening up of the job opportunities that were so badly needed in Puerto Rico.

Q How would this different kind of refinery promote

those job opportunities?

A If such could be established, design toward maximization of petrochemical feedstocks, these could then be moved for further processing and looking all the way down to the end of the road, out of this further processing, there is a wide variety of finished consumer products at the retail level that conceivably could result.

Q In order to further this objective, was any action taken with respect to the Oil Import Program?

A We -- and when I say we, I refer particularly to Mr. Moscoso and myself -- had informal discussions, I think in Washington, with the officials of the U.S. Oil Import Administration, focusing on the opening of Puerto Rico to what I refer to as the third refinery project.

Q What did you ask the Oil Import Administrator to do?

MR. FARRELL: Your Honor, could we set a time for this?

THE COURT: Yes, set a time.

Q Can you fix the date of the meeting with the official of the Oil Import Administration?

A I can't fix a precise date. The meetings to which I made reference would have occurred in 1960.

Q Did you at some time thereafter go to Washington

in furtherance of this?

THE COURT: You are talking about after 1960?

Q After 1960.

A Yes, sir.

Q And can you recall when you first went after 1960 to Washington on this problem of opening up oil imports into Puerto Rico?

A Yes, sir.

Q When was it?

A June of 1961.

Q And who went?

A Mr. Rafael Durand, who had succeeded Mr. Moscoso as Administrator of the Economic Development Administation, and I met with Assistant Secretary Kelley -- sorry -- I think we first met with the then-Oil Import Administrator who was, I believe, Mr. Lawrence O'Connor, and Mr. O'Connor, in turn, arranged for us to meet with Assistant Secretary Kelley.

Assistant Secretary Kelley was in charge of mineral resources.

Q And what was said at that meeting on behalf of the Commonwealth, Mr. Van Hyning?

A I would summarize it as saying that first we wanted to get acquainted with Assistant Secretary Kelley

and secondly explain in a general way our interest in opening up Puerto Rico to a third refinery.

Q Did you indicate your position with respect to the existing refineries in Puerto Rico?

A Yes, sir.

Q And what did you indicate in that regard?

A In that respect we indicated that having resolved its physical and financial difficulties, we wanted the Interior Department to listen sympathetically to proposals of the Commonwealth Oil Refining Company to expand its operations.

Q Was any reference made to the Commonwealth position with respect to competition?

A I'm sorry, I don't understand.

Q Mr. Van Hyning, I show you a document marked D-9. This is from a somewhat earlier period. And I ask you if you can identify that document?

A Yes, sir. I see my initials on the final page. I must have drafted it.

Q And for whom did you draft the letter?

A Mr. Teodoro Moscoso.

Q It is addressed to whom?

A To Captain Matthew V. Carson, Jr., Administrator, Voluntary Oil Import Program, Department of the Interior.

Q This particular letter was sent to the Administrator at or about the date indicate in October 1958?

A That is correct.

MR. MacCRATE: I offer it in evidence, your Honor.

MR. FARRELL: No objection.

THE COURT: It will be received in evidence.

(Exhibit D-9 was received in evidence.)

THE COURT: You may continue.

Q Mr. Van Hyning, did there come a time when you met Mr. Jack Coan?

A Yes, sir.

Q Can you fix that time?

A Not precisely, but it would have been probably in November of 1961.

Q Where did the meeting take place?

A The meeting took place in San Juan.

Q And what was your discussion with Mr. Coan at that time?

A Mr. Coan was interested in a third refinery project.

Q Had Mr. Coan submitted a presentation to EDA in advance of that meeting?

A A presentation had been submitted to the EDA in

advance. Whether it was forwarded by Mr. Coan or not --

Q Did he discuss that presentation with you when he met with you in November of 1961?

A Yes, sir.

Q I show you J-9 and J-10, exhibits at this trial, and ask you if you can identify those two memoranda?

A Yes, sir.

J-9 is a memorandum from me to Mr. Durand.

J-10 similarly is a memorandum from me to Mr. Durand.

Q And do those two memoranda relate to the matter that Mr. Coan discussed with you a week or so later?

A Yes, sir.

MR. FARRELL: Objection, your Honor. These are in evidence and they speak for themselves and, in fact, I think they even show on their face that was the case.

I object to his asking the witness to --

THE COURT: Yes. We don't have to try an unnecessary issue, do we?

MR. MacCRATE: I only sought to relate the documents to the meeting, your Honor.

THE COURT: All right. Let's go on to something else.

Q Did you, in your discussions with Mr. Coan at the

end of 1961, define in any way the type of a program that EDA could support?

MR. FARRELL: Objection, your Honor, unless he specifies when and where the discussions took place.

THE COURT: Yes; time and place and who was present.

Q Did you have discussions with Mr. Coan in November of 1961?

A Yes, sir.

Q Who was present during those discussions?

A So far as I can recall, Mr. Coan and myself.

Q Tell us as best you can recall what Mr. Coan said to you and what you said to Mr. Coan.

A Mr. Coan elaborated, I believe, on this prospectus and, as best I can recall --

MR. FARRELL: Your Honor, I object.

THE COURT: Yes, I will sustain that.

The question was what was the substance of your conversation? What was the substance of what he told you and what did you tell him. If he told you he had a prospectus, you may so testify, but don't describe him as having elaborated. Tell us what he said.

THE WITNESS: I can't attribute any quotes to --

THE COURT: Give us the substance of what he said.

A Well, the substance of what he said was that he was interested in moving forward with the project as described in the prospectus.

Q And what did you say to Mr. Coan?

A I returned only the most general of answers that we were interested in the prospectus.

Q Did you explain anything more than that that you can recall at this time?

MR. FARRELL: Objection. Leading, your Honor.

THE COURT: I don't think that is leading. I will permit him to ask that question.

Q Did you offer Mr. Coan any further explanation at that time that you can recall now?

A No, sir.

Q It has been stipulated, Mr. Van Huyning, that a meeting took place at the San Juan Airport in December 1961 and that you attended that meeting with Mr. Durand and Secretary of the Interior Udall.

Did you, following that meeting, take any action with respect to following up upon that meeting?

A Yes, sir.

Q What did you do?

A I drafted a letter for Mr. Durand's signature to the Secretary.

THE COURT: At this time I will take a brief recess.

Members of the jury may withdraw to the jury room.

(Jury left the courtroom.)

(Continued on next page.)

THE COURT: You may step down, Mr. Van Huyning, and I would like to see counsel briefly just a minute.

(Discussion off the record at the bench.)

(Recess.)

(Jury present.)

BY MR. MacCRATE:

Q Mr. Van Huyning, I show you Plaintiff's Exhibit 37 for identification and ask you if you can identify that letter?

A My initials do not appear on it. I believe I drafted it for Mr. Durand.

Q Was this the letter that you referred to just prior to the recess that you drafted for Mr. Durand to send to Mr. Udall?

A Yes, sir.

MR. MacCRATE: I offer it in evidence.

MR. FARRELL: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 37 for identification was received in evidence.)

Q I show you Plaintiff's Exhibit 39 for identification and ask you if you can identify that document?

A Yes, sir. I wrote this document.

Q At or about the date of December 14, 1961?

A Yes, sir.

Q YOu delivered this memorandum to Mr. Durand, did you?

A It was transmitted to Mr. Durand, yes.

Q At that time?

A At that time.

MR. MacCRATE: I offer it in evidence.

MR. FARRELL: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 39 for identification was received in evidence.)

Q Mr. Van Huyning, it has been stipulate that under date of December 12, 1961 EDA sent a letter to PPI care of Omega Management stating its support for the PPI proposal, which letter has been marked as an exhibit at the trial J-19.

Subsequent to that time did you again see Mr. Coan in San Juan?

A Yes, sir, I probably did but I can't recall the specific date.

Q Do you recall a time when representatives of UPO came to San Juan with Mr. Coan?

THE COURT: Do you know what he means by UPO?

THE WITNESS: Yes, Universal Oil Products.

THE COURT: All right.

Q Do you recall a visit of Mr. Coan with Universal Oil Products to San Juan?

A Yes, sir.

Q Did you meet with them at that time?

A I believe the gentlemen from UPO were a Mr. Shelton and a Mr. Swaine and I met with them but I cannot recall the precise date.

Q Can you fix approximately when it occurred?

A Probably in the period January-March.

Q Of 1962?

A Yes, sir.

Q What was the purpose of the visit of Mr. Shelton and Mr. Swaine to Puerto Rico?

A As best I can recall they were interested in examining possible sites for the location of a refinery.

Q I show you Defendant's Exhibit 37 for ideni-fication and ask you if that refreshes your recollection as to the time of the visit?

A Yes, sir. This was drafted by me and the date given here is the date of the visit, February 20, 21, 1962.

Q Do you know whether a site study was prepared by UPO as a result of that visit?

A I can't respond to that.

Q You do not yourself know?

A That is correct.

Q I show you Defendant's Exhbit 38 for identification and ask you if that refreshes your recollection as to whether UPA thereafter prepared a site survey?

A Yes, sir, they did.

Q I show you Exhibit J-23 and ask you if that is the site study by UPO resulting from their February 1962 visit?

MR. FARRELL: I think we have to establish that Mr. Van Huyning received it. It is a stipulated exhibit.

THE COURT: Yes, did he receive it any time? He may be asked that.

Q Did you receive a copy of that at any time, Mr. Van Huyning?

A No, sir.

Q Do you know if you received it as part of another document at any time? Did you see it one way or another? Do you have any recollection?

A I have no recollection.

Q Did there come a time during 1962 that you visited Monsanto Chemical?

A Yes, sir.

Q When did that occur?

A That would have been in the first half of June, 1962.

Q Who was present at Monsanto?

A At Monsanto the man who I believe arranged the visit was Dr. Norman Lewis.

(Continued on next page.)

Q Was anyone else present?

A I met other people affiliated with Monsanto, but I can't recall exact names.

Q Was there anyone else from Puerto Rico who was there with you?

A Yes, sir. Mr. Durand and Mr. Diaz-Hernandez who was then in charge of the New York Continental Operations Branch of the Development Administration.

Q Where is Monsanto located?

A St. Louis, Missouri.

Q What was the discussion at that time and place?

A The discussion concerned the operation of a synthetic amonia facility, a fertilizer plant located at Guanica, Puerto Rico.

Q And what was said with respect to that plant?

A The purpose of that visit to the Monsanto people was to try to elicit their interest in taking over the operation of that plant.

Q And what was the result of that meeting, if anything?

A It was negative.

Q Did you have further contacts with Monsanto,

you, personally?

A No, sir.

Q In connection with the development of a -- what you call a third refinery, did you from time to time meet with various representatives of different companies?

A Yes, sir.

Q Can you identify representatives with whom you met?

A I met with representatives of Texaco. The local management was a Mr. Bennett.

THE COURT: Just give us the names of the companies, please. That's all you're asked for, is the names of companies.

THE WITNESS: I'm sorry, I thought you wanted names of individuals. I misunderstood.

Q Just give us the names of the companies, Mr. Van Hyning.

A Yes.

Texaco, Gulf Oil, Standard of New Jersey, Crown Central Petroleum, Socony, I believe.

Q During what period of time did you have these meetings?

A 1962 until close to the end of 1964.

Q Did you make any requests of any of these

companies with respect to locating a plant in Puerto Rico?

MR. FARRELL: Your Honor, I would like to have these conversations placed in a time frame.

THE COURT: Yes, they should be placed in a time frame. And I don't think I need to have extensive testimony with respect to transactions he had with other companies. Let's have a time frame.

Q Can you place the time frame any more precisely, Mr. Van Hyning, than you have given, between 1962 and late 1964?

A In the case of Texaco, there were a series of meetings in 1963, and I think that that series of meetings ended probably in December of 1964.

Q What was the subject discussed?

A The subject discussed was a possible Texaco manufacturing operation in Puerto Rico.

Q Of what nature?

A A refinery.

Q For the production of what kind of products?

A It revolved into --

THE COURT: If we are getting this much of it, I will have to have the names and who was present; if we are getting into the discussions of what type of a refinery.

Q Can you identify the individuals with whom you

met?

A Yes, sir.

Q Who?

A I met with Mr. Henry Ryer, who as I recall was then vice president in charge of Texaco's Latin American operations, and with Mr. Maurice Granville, who was vice president in charge of Texaco's chemical operations.

Q And what was the subject of your first discussion with them?

A The subject of the first discussion was their possible interest in the construction of a refinery in Puerto Rico.

Q And did you indicate in the course of that discussion, any particular interest of the Commonwealth with respect to such a project?

MR. FARRELL: Objection, your Honor.

A Yes, I did.

THE COURT: Well, he's already answered it, and I will let the answer stand. But anything else, we should have the substance of the conversation.

Q Would you give me the substance of what you said?

A The substance dealt with the development by Texaco of a refinery which would be petrochemically-oriented.

Q Can you recall anything else that you said to

Texaco at that time?

A Well, we talked about a site, of course.

Q Did you speak about the nature of the products?

A No, sir.

Q Did you speak about the possible design?

A Yes, sir.

Q Do you recall what was said in that regard?

A Yes. They, I believe, finally came up, after discussions of the matter, with a refinery redesigned for a throughput of 63,000 barrels daily.

Q Do you recall what portion of that would result in petrochemical feedstocks?

MR. FARRELL: Your Honor, I think he's leading the witness.

THE COURT: Well, it may be leading, but if he had any discussion about the output of the refinery, I will take it, or the production of the refinery. Ask him did he discuss it.

Q Did you discuss the output of the refinery?

A Yes, sir.

MR. FARRELL: Excuse me. Also, he mentioned discussions between '63 and '64. This particular discussion I don't believe has been placed.

THE COURT: As to this particular discussion we

ought to have the time and place and who was present.

Q When did the particular discussion that dealt with design take place, as best you could recall?

A Either the end of '63 or early '64.

Q And what was said, if anything, with respect to the output of such a refinery?

A From my standpoint, the emphasis that I put was the maximization of production of petrochemical feedstocks.

Q Do you recall what level of petrochemical feedstock the proposal embraced?

A I'm not certain, but I believe it was the order of 9 or 10 percent of the projected throughput.

Q Mr. Van Hyning, did there come a time when you met Mr. Nathan Shippee?

A Yes, sir.

Q And when did that meeting occur?

A It took place in November of 1962.

Q Where?

A At the Caribe-Hilton Hotel in San Juan.

Q Who else was present?

A Mr. Tom Young was present, Mr. J. P. Coan was present.

Q Did you have any conversation with Mr. Shippee at that time?

A Yes, sir.

Q What can you recall of that conversation?

A The discussion between Mr. Shippee and myself at that meeting related to the hazards and the opportunities of exploring for and drilling for oil in the United States.

Q Did he discuss wtih you a proposal for a project in Puerto Rico?

A No, sir.

Q Did he give you any material relating to a project in Puerto Rico for evaluation?

A No, sir.

Q Did you at any time receive any proposal from Mr. Shippee or from Mr. Young or from Prudential Oil Corporation of a proposal for your evaluation?

A No, sir.

Q Did you after that meeting at the Caribe-Hilton in November 1962 again see Mr. Shippee?

A Yes,sir.

Q When was the next time y ou saw him?

A I believe it was August, 1965. I have no recollection of a specific date.

Q Can you describe -- well, where did the meeting take place, first?

A As I recall, the meeting took place in my office

at the Economic Development Administration.

Q Was anyone else present?

A No, sir.

Q Tell us as best you can recall, what Mr. Shippee said on that occasion.

A As I recall, I made reference to the fact that I had read in the newspaper that he had been involved, been injured in an airplane crash, and Mr. Shippee then reached into a briefcase and pulled out a folder of clippings about the crash, and to the best of my recollection, the subject matter of that meeting was this airplane crash.

Q Did he say anything to you about the purpose of his coming to San Juan at that time?

A No, sir.

Q Mr. Van Hyning, when did you first learn that Phillips Petroleum Company was proposing a project in Puerto Rico?

A That would have been in the first week of January, 1964.

Q Where?

A At the offices of the Development Administration in San Juan.

Q Did this take place in a meeting?

A Yes, sir.

Q Would you tell us who was present at that meeting?

A Mr. Durand was present, the representatives of Phillips present were Stanley Learned, Mr. Paul Parker, Mr. Roy Waldby, Mr. Hewitt and I believe Mr. Friedman of Chapman & Friedman was also present.

Q I note that the circumstances of that meeting have been stipulated, and we will pass to the conclusion of that meeting, Mr. Van Hyning, and I ask you, were you given any assignment at that meeting with respect to any proposal made by Phillips?

A There were several meetings, and my best recollection is that I was to work with Mr. Waldby in the preparation of materials related to their proposed manufacturing operation in Puerto Rico.

MR. FARRELL: Your Honor, could we have who gave him this assignment and where that took place?

THE COURT: Yes, I think so.

Who told him he ought to do that?

Q You said there were several meetings.

A I'm sorry, I didn't hear?

Q You said there were several meetings.

A Yes, sir.

Q Were they all around the first week of January

of 1964?

A Yes, sir.

Q And you received an assignment from someone?

A Yes, sir.

Q And who gave you the assignment?

A Mr. Rafael Durand.

THE COURT: He was your immediate superior at that time, was he?

THE WITNESS: No,sir. He was the administrator of the agency.

THE COURT: Who was your superior?

THE WITNESS: At that time, sir, I believe my immediate superior was Mr. Amadeo Francis.

THE COURT: And he in turn was subordinate to Mr. Durand?

THE WITNESS: That is correct, sir.

THE COURT: All right.

Q Did all of your assignments come to you through Mr. Francis?

A No, sir.

Q Did you, from time to time, receive assignments directly from Mr. Durand?

A Yes, sir.

Q And you reported directly to Mr. Durand?

A Yes, sir.

Q Did this assignment with respect to working on the preparation of papers with Mr. Waldby come directly from Mr. Durand?

A Yes, sir.

Q For what purpose were those papers to be prepared?

MR. FARRELL: Your Honor, I object. I would like to know how he found out the purpose, if he did find out the purpose.

THE COURT: If he knows, he can tell what the purpose of the papers were. I assume the papers show that on their face, don't they? You will have a chance to cross examine him. If he knows, he can tell what the purpose was.

Q Mr. Van Hyning, the question is, with respect to the papers, for what purpose were they to be prepared, if you know?

A Yes, sir. The ultimate purpose was that of a presentation of the project to the Oil Import Administrator of the Department of the Interior.

Q Can you identify any of the papers that you prepared or worked on thereafter under that assignment?

A Would you restate it, please?

Q Can you identify any particular papers on which

you worked as a result of this assignment?

A Yes, sir.

I worked particularly on a draft of statement for Mr. Durand to be prepared -- to be presented to the Oil Import Administration.

Q During what period of time did you work on that?

A Beginning in January of '64 and continuing until some time into July, and a hearing was in fact held by the Oil Import Administration in Washington, as I recall, the 31st of July, 1964.

Q Did you work with Mr. Waldby on any papers submitted by Phillips?

MR. FARRELL: OBjection, your Honor. I would like to know when he worked on them and who he worked with.

THE COURT: Well limit it to a period of time.

MR. MacCRATE: I first have to find out whether he did.

THE COURT: Yes, whether he ever did. All right. I'd likt to move along here.

Ask him during the relevant period here. Frame a time.

Q During January of 1964, did you work on any papers or provide comments on papers to be submitted by Phillips?

A I can't recall in January '64 preparing materials for Phillips .

Q Did you have any conversations during that period with Mr. Waldby?

A Yes, sir.

Q Can you fix the time, place, and who was present?

A The time would have been February, March, and actually these were not face to face meetings, they were telephone or cable communications between San Juan and New York.

Q Did you have any meetings with Mr. Waldby in San Juan during January of 1964?

A Yes, sir.

Q Can you fix who was present at any such meeting?

A No, sir. In addition to Mr. Waldby I assume you mean.

Q Can you tell us the subject matter of any such discussion with Mr. Waldby?

A The subject matter was, in effect, a critique of the written material which the Phillips people had brought to San Juan in relation to their interest in a manufacturing operation in San Juan.

Q Were you making the critique or was Mr. Waldby making the critique?

MR. FARRELL: Your Honor, I think that Mr. MacCrate is leading the witness.

THE COURT: Well, I don't know that that last question is necessarily leading.

How old are you, sir?

THE WITNESS: 61.

THE COURT: I will permit the last question to be answered. If somebody was making a critique, who was it?

THE WITNESS: I made comments, suggestions for changes in certain of the materials that had been brought to San Juan by the Phillips people.

Q Can you recall today any of the suggestions you made to Mr. Waldby at that time?

A No, not at that time.

Q Mr. Van Huyning, I show you Defendant's Exhibit 170 for identification. I invite your attention to the last page of that document and ask you if that in any way refreshes your recollection as to any comments that you made to Mr. Waldby upon the Phillips papers in January of 1964?

A Yes, sir.

Q What is your refreshed recollection in that respect?

A Those notes indicate to me among other things that in the revision of the document that he should stress the research and engineering strength of Phillips among other things.

Q Do you recall anything else that was discussed with Mr. Waldby at that time?

A No, sir.

Q It has been stipulated that Mr. Durand sent a letter on January 28, 1964 to Secretary Udall in support of the Phillips proposal.

Did you participate in the drafting of that letter?

A Yes, sir.

Q Who worked with you in the preparation of that letter, if you recall?

A My recollection is that Mr. Coan came to Puerto Rico with a draft of the letter and I worked with Mr. Coan revising that draft.

Q J-48, the letter of January 28, 1964 was the result of that draft?

A Yes, sir.

Q Did you go to Washington at the time of the hearings before the Oil Import Administration?

A Yes, sir.

Q What did you do there?

A I accompanied Mr. Durand to the witness table and as best I recall I made only one comment during the hearing. The presentation was Mr Durand's.

Q Prior to the hearing had you discussed with Mr. Durand his proposed testimony?

A Yes, sir.

Q What had been your contribution in connection with its preparation?

MR. FARRELL: I object to the form of the question.

THE COURT: Well, it isn't only the form. Will counsel approach the side bar?

(At the side bar.)

THE COURT: Isn't it true that Mr. Durand's

testimony is in the record here in one of these exhibits and what Durand did is no different in the posture of this case than if this witness did it?

MR. MacCRATE: I was simply bringing out that he was involved in each stage.

THE COURT: He was but our time is precious. I don't think it makes any difference whose work comprised Durand's testimony.

MR. MacCRATE: All right.

(In open court.)

Q Mr. Van Huyning, it has been stipulated that following the hearing on July 31, 1964 an initial determination was made by the Secretary of the Interior on February 11, 1965.

Addressing ourselves to that period, did you have any assignment with respect to the proposed Phillips project following that action by the Secretary of the Interior?

A February 1965?

Q Yes, sir.

A Yes. The matter of the Phillips application was going to be the subject of another public hearing and, as best I can recall, I got an assignment from Mr. Durand to prepare material for the second hearing.

Q In addition to preparing material for the second hearing, did you have any further assignment that you can recall?

A None that I can recall, sir.

Q Did there come a time when you were involved in the negotiation of a contract with Phillips?

A Yes, sir.

Q How did that come about?

A That came about because the Interior Department, I believe, requested that Phill-ps and the Commonwealth Government prepare and present to the Department an agreement or memorandum of understanding -- I don't know what the proper term is.

Q Did you engage in such negotiations?

A Yes, sir.

Q What position did you take on behalf of the Commonwealth in those negotiations?

MR. FARRELL: Objection, your Honor. I think we should have when, where and what he said.

THE COURT: This is all in 1965, isn't it?

MR. MacCRATE: In 1965, your Honor.

THE COURT: See if you can fix the date more clearly.

Q Can you fix the time of these negotiations?

A They would have been in mid-May I believe of 1965.

Q Were there particular provisions that you were requesting on behalf of the Commonwealth?

A Yes, sir.

Q Can you tell the jury what those were?

A The Commonwealth Government wished an equity position in the corporation which would operate the facility.

The Commonwealth Government wished to have representation on the board of directors of the corporation.

The Commonwealth Government wished to have an investment commitment by Phillips in addition to the cost of the construction of the manufacturing facility.

The Commonwealth Government wanted to maximize the further fabrication of petrochemical streams in Puerto Rico.

There were probably others but I can't now immediately recall.

Q These items that you have just enumerated, what was the result of the negotiation? Did they become a part of the agreement?

A In the matter of the equity participation, yes.

In the matter of reserving the petrochemical

streams for further fabrication in Puerto Rico, yes.

Could the Court Reporter read back the others that I mentioned?

THE COURT: Would you frame another question so as to save time?

MR. MacCRATE: Yes. We will rely upon the agreement, your Honor. It is in the record.

Q Do you recall when the final action was taken granting a quota to the Phillips project?

A Yes, sir, it was.

Q When was it?

A December 1965.

Q What was the nature of that quota that was granted in December 1965?

A It was for 50,000 barrels per day.

Q How did it compare with the existing quota allocations that had been made to the existing refineries in Puerto Rico?

A I believe that the quota of the Caribbean Refining Company was of the order of 18,000 barrels a day.

In the case of the Commonwealth Oil Refining Company, their initial quota under the mandatory system was just under 62,000 barrels a day. But I believe between the

date of the initial quota and December 1965, Commonwealth had received some increase in their quota but I am not certain of that.

Q In addition to the amount of the quotas, were the terms of the quotas assigned to the existing refineries the same as the terms of the quota assigned to Phillips?

A No, sir.

Q What was the difference?

A The main difference I believe, and there may have been other differences, was that the quota which Phillips received contained a provision which limited the amount of gasoline that Phillips was permitted to move from Puerto Rico to the United State mainland.

Neither Commonwealth Oil nor Caribbean Refining had any such restriction in its quota.

Q Are you familiar, Mr. Van Huyning, with the quotas granted for direct importation into the United States?

A Yes, sir.

Q Can you tell us any difference between the quota or allocation given to Phillips and the ordinary quota granted for importation directly into the United States?

A Yes, sir. One important difference is the

fact that Phillips was able to import 100 per cent of its import ticket in the form of unfinished oils in the case of naphtha; whereas the mainland refinery could import only up to 10 per cent of his ticket in the form of unfinished materials.

Q Was there any difference with respect to assignability?

A I believe not.

Q Do you know if there was any difference with respect to the provision for a specific purpose?

A No, sir.

Q Did you understand that the Phillips quota was assignable and usable for another purpose?

A No, I believe it was not.

THE COURT: How about these other two oil companies, could they sell their quota?

THE WITNESS: No, sir.

MR. MacCRATE: I have no further questions.

CROSS EXAMINATION

BY MR. FARRELL:

Q Mr. Van Huyning, did Phillips pay your transporation up here?

A Yes, sir.

Q Are they paying your expenses while you are

here?

A Yes, sir.

Q Are they paying you a consultant's fee in addition to your actual expenses?

A I will bill them a consultant's fee at the conclusion.

Q You also billed them, did you not, for a consultant's fee when they took your deposition in San Juan?

A That is correct.

Q Turning your attention to the period in October, 1962, did you have any subordinate at that time? Anyone reporting to you in EDA?

A Only a secretary.

Q Now, at the time that you met with Mr. Shippee did you also meet Mr. Young?

A Yes, sir.

Q Did Mr. Young tell you what he was interested in doing there?

A Only in a very general way. He was interested in examining possible sites.

Q The promotion for a third refinery about which you testified came principally from the New York office, did it not, that is, the New York office of EDA?

A In 1962?

Q Talking about that period, yes.

A Yes.

Q At the time that Mr. Young was there did he go on a site selection tour with you?

A Yes, sir.

Q You spent the day with him?

A Yes. We must have left say 9 a.m. from San Juan and returned say about 4 p.m.

Q During this period was he at all specific as to what it was that he was going to place on this site if he found it?

A No, sir.

Q In your conversation with Mr. Shippee, did he say anything about his purpose in being in San Juan?

A No, sir.

Q Do you know whether Mr. Shippee met with Mr. Diaz during the time he was in San Juan?

A No.

Q You don't know?

A I don't know.

Q At any time did Mr. Shippee or Mr. Young refer to Phillips Petroleum and say they had any sort of relation whatever with Phillips?

A No, sir.

Q In your conversations with Mr. Coan in October of 1962, did he mention Phillips at any time?

A Mr. Farrell, I believe it was November of 1962.

Q I stand corrected, November.

Did he mention Phillips?

A No, sir.

Q Did you at any time up to 1964, January 1964, know that there was any contact between Prudential and Phillips of any sort whatsoever?

A I was not aware during that period of any contact between Prudential and Phillips.

Q Or any relationship whatever it was between Prudential and Phillips?

A I was aware of no relationship.

Q In the brochure that has been marked J-45 I believe you identified on your deposition as being a copy of the one that Mr. Waldby had and a copy of one that Mr. Durand gave to you about that time, is that correct?

A That is correct.

Q At the time that Mr. Waldby met with you this document was the Phillips brochure describing the proposed project?

A Yes, sir.

Q In June 1962 when you met Mr. Chapman, was there

ars

before EDA a proposed petrochemical project for consideration?

A Not to my knowledge.

Q Had the previous proposal of the Gibbs group died by that time?

A Yes, sir.

Q Did Mr. Chapman or Mr. Coan ever mention to you during the first six months of 1962 a Mr. Brown?

A I don't recall, sir.

THE COURT: At this point we will recess until 3 o'clock, members of the jury. Please withdraw and we will resume at 3 o'clock.

(Luncheon recess taken until 3.00 p.m.)

AFTERNOON SESSION

3 p.m.

(In open court - jury present.)

S A M J O H N V A N H Y N I N G, JR., resumed.

THE COURT: Mr. Farrell, you may resume the cross examination.

CROSS EXAMINATION CONTINUED

BY MR. FARRELL:

Q Mr. Van Hyning, at the time that you took the site selection tour with Mr. Young, was Mr. Diaz in Puerto Rico, do you remember?

A I believe so.

Q Mr. Diaz was then chairman or director of the Continental Branch of EDA?

A Yes, sir.

Q Do you know how many people he had under him at that time?

A Oh, I don't know exactly. My guess would be 75; 100.

Q Mr. Van Hyning, I show you an exhibits that's been marked J-38, and ask if you saw that at or about the time of its date, which is October 25, 1962.

A I don't believe I did.

Q Now, Mr. Van Hyning, I show you Joint Exhibits 60 and 61, and ask if you prepared them or worked on the preparation of those documents.

A I don't believe I prepared either of the documents. I believe I may have supplied some material for one or another of them.

Q Now, calling your attention to paragraph 9 on page 4 of J-61, did you supply any material for that paragraph?

A Number 9?

Q Yes.

A No, sir, I don't believe that I did

Q How about paragraph 12 of Joint Exhibit 61, which starts on page 5 of that exhibit.

A I don't believe that I prepared that or any part of it.

Q And how about paragraph -- at the bottom of page 9, which is paragraph 18; did you prepare or provide any material for the preparation of that paragraph?

A I certainly didn't prepare it. I don't believe I supplied any material that went into it.

Q In or about March of 1963, did you know that Mr. Diaz had told Prudential that their presentation was not satisfactory?

A No, sir.

Q Had you ever seen the presentation by Prudential referred to in this letter?

A Not to my knowledge, sir.

Q Now, in your work with Mr. Waldby, did you provide Mr. Waldby with any written material for the revision of J-45, other than what you have testified about on direct?

A I think there was one exchange that concerned my inability to account for about 12,000 barrels a day of feedstock.

Q And when you say an exchange, you mean conversation or correspondence?

A No, sir, I believe it was either via telephone or by cable.

Q During the time after you met Mr. Waldby in January 1964, was Mr. Waldby in Puerto Rico at any time?

A I don't recall his being in Puerto Rico subsequent to the June meetings and prior to the public hearings.

Q Well, I'm talking about between -- there were meetings in January '64.

A I'm sorry, yes, between the January meetings and the July hearing in Washington, I do not recall Mr. Waldby's being in Puerto Rico.

Q Now, the final Phillips presentation to Mr. Durand and the Department of Interior was the document which has been marked J-50, which I now show you; is that not correct?

A Yes, sir, that is correct.

Q And so as far as you know, this was prepared by Mr. Waldby, based upon the note or notes that you gave him and these conversations with you?

MR. MacCRATE: Objection, your HOnor.

THE COURT: If he knows. He can answer if he knows.

Q So far as you know, Mr. Van Hyning.

A Yes, sir.

THE COURT: You do know that he prepared it based upon something you gave him.

THE WITNESS: Incorporating some suggestion, I think, that I made.

Q But your only input into this document were those suggestions about which you have just testified and in the notes that you identified on your direct testimony, isn't that correct?

A Yes, sir.

Q And so far as you know, the entire remainder of the document is the work of Mr. Wladby or his associates

at Phillips?

A That's correct, sir.

Q Now, turning your attention to your conversation with Mr. Shippee in 1964, at that time did Mr. Shippee mention Prudential Polymer?

A I don't recall, Mr. Farrell, having a conversation with Mr. Shippee in November '64.

Q I didn't say November. I think in your direct testimony you testified that you spoke with Mr. Shippee some time in 1964.

A No, sir. I have no recollection of speaking with Mr. Shippee in November of '64. I spoke with him in November '62 and I believe in August '65, and there were no intervening meetings.

Q I'm talking about the meeting where he brought the clippings about the air crash.

A That was August of '65.

Q '65?

A Right.

Q Sorry. At that meeting did he tell you about the formation of a company or a corporation called Prudential Polymer?

A No, sir.

Q Well, I'm going to read to you from your

deposition. You remember being deposed in this action in San Juan, Puerto Rico, on May 7th, 8th and 9th, 1973?

A I do, sir.

Q I'm going to ask you whether you were asked this question and whether you gave this answer:

"Q There is a reference here to Prudential Polymer Company, Puerto Rico, Inc., as having been incorporated. Did Mr. Shippee refer to that in his conversations with you?

"A He probably did, but my main recollection of this '65 meeting was his account of what happened to him in this awful plane crash."

Does that refresh your recollection as to whether Mr. Shippee mentioned Prudential Polymer to you?

A No, sir, it does not.

Q So at this time you have no recollection of his saying anything about Prudential Polymer?

A I have no recollaction whatever, sir.

Q Did he mention to you in that conversation anything about a proposed satellite plant for the proposed Phillips project?

A I have no recollection of any such mention.

Q Do you recall receiving a letter from Mr. Shippee subsequent to that meeting?

A Yes. I think I did receive a letter in which he

it was a courtesy letter following up his visit to my office.

Q I show you an exhibit that has been marked Plaintiff's Exhibit 180 for identification, and ask if that refreshes your recollection as to whether Mr. Shippee mentioned Prudential Polymer to you.

A It certainly does. He must have.

Q So now you recall that he did mention it?

A Yes.

Q Do you recall what he said to you about it at that time?

A No, sir, I have no recollection of any substance that was discussed.

Q I call your attention to the first line after the salutation in the letter, and ask if you can recall whether you gave any advice or counsel to Mr. Shippee at that meeting.

A Sir, I don't recall giving him any specific advice.

Q And so you don't recall at this time what that first sentence refers to?

A No, sir, I don't.

Q Mr. Van Hyning, in October of 1962 , do you know the difference in price between imported petroleum

and United States domestic petroleum.

THE COURT: You're talking about a price landed in Puerto Rico, or are we talking about price in the United States? What are we talking about here?

MR. FARRELL: What I'm talking about is wherever domestic oil was landed, and wherever an equivalent amount of foreign oil was landed, was there a price distinction.

THE COURT: All right. He may answer.

A The price distinction, of course, is a generalized average. If I get the significance of your question, my recollection at the time you mentioned, October '62, I believe?

Q Yes.

A The differential, I think, was generally accepted as being of the order of $1 per barrel.

Q That is the domestic oil was $1 more expensive than the foreign?

A That is correct, sir.

Q Now, do you know whether in October, 1962 there were attempts by various petroleum companies to obtain quotas for the importation of foreign oil?

A Yes, sir.

Q In fact, quotas or allocations of this type were, in fact, very desirable, were they not?

A Yes, sir.

Q And in fact that was one of the reasons or the principal reason why the companies you referred to in your direct testimony, Texaco and some of the others, wanted or considered starting plants in Puerto Rico, is that right?

A That was, I would say a most important incentive to them to manufacture in Puerto Rico.

Q And in fact, if the quota had not been available, those companies that you spoke to had no interest in building plants in Puerto Rico, is that correct?

A No, sir, I think that is not correct for this fact:

Two companies decided to manufacture in Puerto Rico before there was a control system, namely Commonwealth Oil and Caribbean Refining.

Q But at that time, Mr. Van Hyning, at the time that Commonwealth and -- was it Gulf?

A Gulf and J. H. Whitney interests combined to build the Caribbean Refining plant.

Q Right. But at the time that those facilities were established, was there a difference in price in domestic and foreign oils?

A I believe that domestic oil was somewhat higher in price at that time, 1952, 1953, than let's say Venezualen oil was.

Q By foreign what do you mean, you mean from the Near East?

Did you say foreign oil was less expensive than Venezuelan?

A If I said that I didn't mean to. Venezuelan oil is foreign oil.

Q That is what I thought.

MR. MacCRATE: The witness spoke quite correctly.

THE COURT: The jury heard what was said and as to what was said the record will show.

Q In October 1962 had EDA made a decision to support a petrochemical project and in connection therewith a request for an allocation, import allocation to supply raw materials for such a project?

A EDA made a decision to support a project?

Q Any project, just in general. They were looking for a project in Puerto Rico, weren't they?

A Yes.

THE COURT: A petrochemical project.

Q Yes, a petrochemical project in Puerto Rico?

A That is correct, sir.

Q And EDA understood that in order to establish a petrochemical project a foreign import quota would be required, is that not true?

A That is correct.

Q And the EDA had decided that when a project was presented to it which it deemed feasible, it would support that project's request for a quota before the Department of Interior, did it not?

A That is correct, sir.

Q A petrochemical project without a quota was not economically feasible, was it?

A Texaco I believe at one time proposed publicly that it was examining the possibility of using U. S. Crude for a manufacturing operation in Puerto Rico.

Q And after it examined that possibility it went no further on such a proposal, did it?

A That is correct, it went no further with this proposal.

Q In fact, a petrochemical project with a quota would have a dollar per barrel advantage over a petrochemical project without a quota, isn't that correct?

A That I believe was the generally accepted price differential, yes, sir.

Q The EDA had also decided, had it, that it would not support an import allocation for more than one petrochemical project?

A I don't believe that is correct, sir.

Q Was it EDA policy to support before the Department of the Interior any request for an import allocation?

A No, sir.

Q Was it EDA policy to support before the Department of Interior a request for more than one allocation for a petrochemical project?

A If on their merits there were more than one I believe it was EDA policy to support more than one, yes, sir.

Q Mr. Van Huyning, EDA understood that its support before the Department of Interior was extremely important in the granting of a quota, was it not?

A That is correct.

Q EDA did not expect that the Department of the Interior would grant a quota for a project in Puerto Rico if the EDA opposed that quota, isn't that correct?

A That is correct, sir.

Q As a matter of fact, therefore, did not the EDA have the ability to determine whether there would be any more than one petrochemical project in Puerto Rico?

A Let me put it this way if I may:

In the absence of EDA support it is most doubtful that an applicant's petition would secure the approval of

the Department of the Interior.

Q At any time during the negotiations or during the conversations between EDA and Phillips Petroleum, did the EDA say that it would not support a quota for a competing petrochemical project?

A Not to my knowledge.

Q You don't recall or they didn't do it?

A I just don't recall.

Q As a matter of fact, Mr. Van Huyning, during the period from 1964 through 1973, did the EDA support any other application for an import quota on behalf of a proposed petrochemical project?

A Mr. Farrell, I can only speak beginning with 1956 as to what EDA did or did not do.

Q Well, I brought you further than that. I brought you up to 1974 but I know you left in 1969 so I will leave the question from 1964 to 1969.

During that period did EDA support any other application for an oil import quota on behalf of a petrochemical project?

A Not to my knowledge, sir.

Q In fact, since the Phillips facility has been constructed, has there been any other petrochemical core plant built in Puerto Rico?

A No, sir. But during the period in question Sun Oil received a quota for a conventional refinery.

THE COURT: Somebody received it?

THE WITNESS: I am sorry, it was Sun Oil Corporation.

Q Do you know when they received that?

A I believe it was in the second half of 1968.

Q Did EDA support that application?

A Yes, sir.

Q What is the charge stock of the Sun Refinery?

THE COURT: Nothing about the Sun Refinery, that is too remote in time and too extensive a cross-examination, talking about 1968.

I will let you complete the record and he can answer that but I don't want a lot about the Sun Oil Company.

What is the answer to that, what was the charge stock in Sun Oil?

THE WITNESS: I believe the quota, sir, was for 66,000 barrels a day.

THE COURT: Crude oil?

THE WITNESS: Yes, of crude oil.

THE COURT: Let's forget about Sun Oil and go on to something else.

Q Mr. Van Huyning, is there today a satellite of Phillips Core plant in existence?

A Yes, sir.

Q What one is that?

A Fibers International.

Q Do you know whether Fibers International is still operating?

A It is my understanding from the press that the plant is not now operating.

Q As a matter of fact, Mr. Van Huyning, did Fibers International get is charge stock directly from the Core?

A I am not certain of that but I believe that at the time that Fiber was started it was not getting its charge stock from the Core.

Q Do you recall whether it ever got its charge stock directly from the Core?

A I just don't know, sir.

Q You testified on direct examination about a conversation with Monsanto. When was that?

A In June of 1962.

Q About an ammonia plant?

A Fertilizer plant, yes, sir.

Q Do you recall the reason that Monsanto gave you

why it would not operate this fertilizer plant?

A No, sir, I don't.

Q Was the ammonia plant a plant that would be supplied with charge stock manufactured in Puerto Rico?

A No, sir.

Q Did it have anything to do with the establishment of a petrochemical complex in Puerto Rico?

A No, sir.

Q In December 1963 do you recall Mr. Diaz coming to Puerto Rico with a letter from the president of Phillips?

A No, sir.

Q I am showing you Joint Exhibit 45 and I show you a copy of a letter on the letterhead of Phillips Petroleum Company dated December 16, 1963 and ask if that refreshes your recollection as to whether you were aware that Mr. Diaz brought that letter to Mr. Durand on or about that date?

A I became aware, Mr. Farrell, of the letter some time in the first week of January 1964.

Q When Mr. Waldby or Mr. Durand gave you a copy of that brochure?

A I believe that is correct.

Q Mr. Van Huyning, did Phillips subsequently buy out the minority share of PRIDCO in the petrochemical core

plant?

A I understand that they did but that was subsequent to my leaving the EDA.

Q You don't know anything about that sale?

A I have no personal knowledge of that transaction in which Phillips purchased the 25 per cent equity that the Puerto Rico Industrial Development Company had in the core facility.

Q Do you know what they were paid?

MR. MacCRATE: Objection.

THE COURT: He says he doesn't know but isn't that in the record here? If it is repetitious I will sustain it on that ground.

MR. MacCRATE: There is a stipulation as to the purchase.

THE COURT: That is my understanding.

Isn't there a stipulation or has it not been testified to by Mr. Rosenthal?

MR. FARRELL: Mr. Walker I believe.

THE COURT: All right, Mr. Walker. If it is in the record I don't want to have it twice, particularly if it is on hearsay from this witness

MR. FARRELL: That is all I have, your Honor.

THE COURT: Any redirect examination for Mr. Van Huyning?

MR. MacCRATE: Very briefly, your Honor.

plm. jklt 1 Van Hyning-redirect

Q In the period 1963 to 1969, was there any expectation of petrochemical facilities in Puerto Rico other than by the building of the Phillips Puerto Rico Core?

A Yes, there were expansions of the facilities of Commonwealth Oil.

Q What was the order of magnitude of that expansion?

A I can't testify to that in terms of numbers.

Q Did it require an additional quota for the import of oil for the Commonwealth facility?

A Yes, sir, it did, but once again, I can't give you numbers.

Q Can you give the approximate time when such expansion occurred?

A I believe that one of the expansions involving Hercules Powder must have occurred around 1965, but I'm not certain of that.

Q Who in EDA had the final authority to decide whether a particular project would be given official support by EDA?

A The administrator of EDA.

Q Prior to his giving such support, was there an evaluation made for him?

A Generally, yes.

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Q Did you have any responsibility or role with respect to the process of evaluation?

A Yes, sir.

Q And what responsibility did you have?

A To examine the project in detail with such outside advice as I might wish to seek as a basis for making a specific recommendation as to acceptance or rejection by the administrator.

MR. MacCRATE: I have no further questions.

THE COURT: Anything else for this witness?

MR. FARRELL: No, your Honor.

THE COURT: All right, you are excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

(At the side bar.)

MR. JEMISON: Your Honor, we had advised plaintiff that our next witness would be Mr. Bruce Brown. However, he is required to be in New Orleans this weekend and could not be back in time to start trial Monday. We have a witness ready, Mr. Dale Fischbeck, who was our third designated witness, and if plaintiff has no objection, we will proceed with Mr. Fischbeck.

MR. MacCRATE: I advised Mr. Marks of this during the recess.

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THE COURT: Very well. Did you need a recess now, or can you go ahead?

MR. FARRELL: Your Honor, we would only want to be assured that we would not be required to complete our cross examination of Mr. Fischbeck today. I doubt that that would happen, but we have not prepared; we have been preparing for Mr. Brown.

THE COURT: I don't think that is unreasonable. We will go as far as we can with him and then resume on Monday with Mr. Fischbeck and then you say that Mr. Brown will be here?

MR. JEMISON: He will be here Tuesday, but we will have witnesses to follow Mr. Fischbeck. He will simply be out of order as far as our case is concerned.

THE COURT: Do you all know what Mr. Brown is going to testify to? Is it something that can be stipulated?

MR. JEMISON: I believe not, your Honor. It is too far ranging to be the subject of a stipulation.

MR. FARRELL: Could I find out who the witness after Mr. Fischbeck will be?

MR. JEMISON: Yes, Dick Holland.

MR. MARKS: He will be very brief.

MR. JEMISON: We will have to decide this and notify you over the weekend.

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MR. FARRELL: Thank you.

(In open court.)

MR. JEMISON: Your Honor, the defendant will call Mr. Dale Fischbeck. He is in the hall.

THE COURT: All right.

A U G U S T D A L E F I S C H B E C K, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JEMISON:

Q Mr. Fischbeck, were you formerly an employee of the Phillips organization?

A Yes.

THE COURT: Please speak up nice and loud. Any juror who can't hear, raise your hand.

Q During what years were you employed by Phillips?

A From December the 1st, 1946 until October the 1st, 1973.

Q Are you now retired from Phillips?

A I am.

Q Is Phillips paying for your expenses in connection with your appearance at this trial today?

A They are.

Q What has been the nature of your work prior to

joining Phillips in 1946?

A Prior to 1946 and beginning June the 4th, 1931, I worked in refineries. This word included from common labor and clean-out gangs, bull gangs and every type of work in a refinery from common labor to general superintendent of plants.

Q What has been the nature of your work since joining Phillips?

A Since joining Phillips I have been engaged in the servicing and licensing of Phillips' repeated processes which they license to industry, and also in the formation of new companies, overseas primarily, for the petrochemical manufacture.

Q Did there come a time when you were transferred to New York?

A I was transferred to New York in about February 1959.

Q What specifically was the nature of your work while you were in New York?

A While in New York, I was manager of project development in the international department.

Q And what was your job title, sir?

A Manager of project developments.

Q And where was your office located in New York?

A Our office was located at 80 Broadway on the 28th floor.

Q Was this the same location as occupied by that portion of the international department which was in New York?

A It was.

Q And how many employees, Phillips employees, were at that location?

A Approximately thirty. There may have been a few more. I'm not sure. Approximately thirty.

Q Did you have any people under your supervision?

A Yes.

Q And how many were there, sir?

A I had George Bruner --

THE COURT: Just the number, please. The number of people.

A I think seven.

Q And to whom did you report?

A I reported to the assistant manager of this office, and also to the manager of the office. The assistant manager, when I first went there, was I. L. Coffman, and John Gatgood was the manager. Later, Mr. Coffman passed away, and he was replaced by Dick Elliot, R.E. Elliot, and Mr. M.W. Conn became the manager of the international offices.

Q And whom did Mr. Conn report to, if you know, sir?

A Mr. Paul Parker, vice president of the international department in Bartlesville, Oklahoma.

Q Turning specifically to the years 1962 and 1963, could you describe your activities generally during those two years?

A During those two years I was involved in about thirty different considerations ranging from refineries to a gambit of petrochemicals, primarily carbon black, synthetic rubber, polyethylene, polyolefins and of that nature.

Q Could you describe generally the geographical area covered by these projects?

A They were practically world-wide. They ranged from South Africa to the countries of Europe, India, Japan, in general it was Italy, Germany, France, Spain and India and Japan -- I think that is pretty well, it's round the world, more or less.

Q Have you ever investigated for Phillips any matters related to Puerto Rico?

A Yes.

Q Would you please describe the first such matter pertaining to Puerto Rico?

A The first assignment that I had relating to

Puerto Rico had to do with the Commonwealth refinery.

Q Approximately what time was that?

A As I recall, that was either late November or December of 1956.

Q Did you make a trip to Puerto Rico in that connection?

A I did.

Q And could you describe for us generally what you saw and observed at that time?

A I spent nearly thirty days in the Commonwealth Refinery. At that time we were considering the possibility of either purchasing an equity in Commonwealth, or maybe the whole thing, I'm not sure what the interest was. They were having a lot of plant problems. They had a couple of Houdry-type cat crackers that were not operating properly.

THE COURT: Except for the fact that you made the trip, is it relevant what the 1956 difficulties of Commonwealth were?

MR. JEMISON: Not particularly so, your Honor, other than --

THE COURT: I will take his testimony that he went down there and spent thirty days investigating the operations of Commonsealth for Phillips, if that is what is offered to be shown.

MR. JEMISON: Fine.

THE COURT: Is that what you did?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And did you make a recommendation with respect to Commonwealth Refinery?

A I did.

Q And could you tell us what that recommendation was?

A My recommendation after project evaluations were made in Bartlesville was to the effect that we do not proceed with acquiring any equity interest in Commonwealth.

Q Do you know what decision was made by your management in Bartlesville?

A Well, it is my understanding that they decided not to.

Q When was the next occasion where you investigated the possibility of a project in Puerto Rico?

A I believe it was in 1962, when Mr. Coan came to my office with another man to discuss the possibilities of a refinery in a petrochemical project in Puerto Rico.

Q Can you place this approximately timewise in 1962?

A I think it was in March. I'm not sure. Do you

have something that could help me here?

Q Mr. Fischbeck, I hand you what has been marked Joint Exhibit 26 and ask you to identify that document, if you could, please, sir.

A This document is a memorandum that I prepared covering the meeting with Mr. John Gibbs and Mr. J. P. Coan of Omega.

Q And does that document set out the substance of what was discussed at that meeting?

A It does.

MR. JEMISON: Your Honor, I would at this time read Joint Exhibit 26.

(Mr. Jemison read from Joint Exhibit 26 in evidence to the jury.)

Q Mr. Fischbeck, I hand you again a copy of what was identified as Joint Exhibit 26, and ask you if you can identify the letters which I said were illegible to me.

A V.E.A.?

Q Mr. Fischbeck, following this initial meeting with Mr. Coan and Mr. Gibbs on March 7, 1962 did you write Mr. Coan a letter expressing interest in the project discussed with Mr. Coan and Mr. Gibbs?

A I wrote Mr. Coan a letter after the meeting.

Q Do you recall if it was shortly after the meeting?

A As I recall, it was after the meeting.

Q Mr. Fischbeck, I hand you a document which has been marked as Joint Exhibit 27 and ask you if you can identify that document?

A Yes. It is a letter I wrote to Mr. Coan.

Q Was it written on or about the date it bears, March 9, 1962?

A It was.

MR. JEMISON: Your Honor, at this time I will read Joint Exhibit 27 to the jury.

(Exhibit read.)

Q Mr. Fischbeck, did you attend the meeting on thi possible project on or about March 16, 1962?

A I did.

Q Mr. Fischbeck, I hand you a document which has been marked as Joint Exhibit 28 and ask you if you can identify that document?

A It is a report I made to my management, a memorandum of the meeting with Mr. Coan.

Q On or about March 16?

A Yes, sir.

MR. JEMISON: Your Honor, this document has already been read to the jury and I will not read it again.

THE COURT: All right.

Q Following the meeting on March 16, 1962, did Mr. Jack Coan furnish you with preliminary work done by Universal Oil Products?

A Yes, he did.

Q Mr. Fischbeck, I hand you a document previously marked Joint Exhibit 29 and ask you can you identify that letter?

A Yes. It is a letter I received from Mr. Coan relating to the data.

Q Furnished by Mr. Coan?

A Yes.

Q Did you receive it on or about March 22 or in that area?

A According to the notation I made here I received it on March 26.

Q 1962?

A Yes, sir.

MR. JEMISON: Your Honor, I will Joint Exhibit 29 to the jury.

(Exhibit read.)

Q Mr. Fischbeck did you return the Universal Oil Products Corporation report to Mr. Coan?

A Yes, I did.

Q I hand you a letter which has been marked as Joint Exhibit 30 and ask you if you can identify that for us, please?

A It is a letter I prepared and sent to Mr. Coan.

Q Did you prepare it and send it on or about the date it bears?

A I did.

MR. JEMISON: Your Honor, I will at this time read Joint Exhibit 30 to the jury.

(Exhibit read.)

Q Mr. Fischbeck, subsequent to your letter of April 2, 1962 to Mr. Coan, did you learn of a presentation by Mr. Bruce Brown to Phillips in Bartlesville concerning a proposed Puerto Rican project?

A I did.

Q Was this the same project which you had previously discussed with Mr. Coan and Mr. Brown?

MR. MARKS: I object.

THE COURT: Sustained.

MR. MARKS: I object to the preceding question and would like to know whom he learned it from and when.

THE COURT: I sutained the objection to the pending question and as to that other matter you will have a chance to cross-examine.

MR. JEMISON: I will be pleased to do it.

Q Mr. Fischbeck, would you tell us from whom you learned of the presentation in Bartlesville?

A From Mr. C.C. Tate.

Q Could you tell us if this presentation involved the project which you had discussed with Mr. Coan?

A To the best of my knowledge the substance of the presentation was the same that he talked about.

Now, I did not at that time have Mr. Brown's letter to the management in Bartlesville. I still don't have it. But as far as I know he described the same project in Bartlesville more or less that had been described at the Saturday meeting which I guess was on the 16th of March.

Q Were you subsequently advised of the action which Phillips' executive committee took on this propal?

A I was.

THE COURT: That is the Brown proposal?

MR. JEMISON: Yes, your Honor.

Q Mr. Fischbeck, I hand you a letter which has been marked as Plaintiff's Exhibit 49 and ask to identify that for us, please?

A That is a letter I received from Mr. Tate telling of the action taken in Bartlesville of the proposal submitted By Mr. Bruce Brown.

MR. JEMISON: The defendant would offer Plaintiff's Exhibit 49.

MR. MARKS: No objection, your Honor.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 49 for identification was received in evidence.)

MR. JEMISON: I will at this time read Plaintiff's Exhibit 49 to the jury.

(Exhibit read.)

THE COURT: We will take a brief recess at this time, members of the jury, and you may withdraw to the jury room.

(Recess.)

THE COURT: Bring in the jury.

(Jury present.)

BY MR. JEMISON:

Q Mr. Fischbeck following your letter of April, 1962 and the action that you learned of by the Bartlesville or the Phillips executive committee in Bartlesville with respect to the proposal submitted by Mr. Brown, were you at a later time instructed to make yourself available for conferences with persons outside of Phillips who were promoting a project in Puerto Rico?

A I was.

Q Approximately when did this occur?

A Either late November or in December or the first few days of January, and I'm not sure of that date.

THE COURT: This is '62 and 3?

THE WITNESS: Oh, excuse me. May I ask, was it '62 you said?

Q Yes. I was orienting you; following your advice by Mr. Tate as to what the Phillips executive committee did with respect to Mr. Brown's proposal in April of 1962, did there come a time later when you were instructed to work with people outside of Phillips with respect to a project for Puerto Rico?

A There was.

Q Can you fix the approximate time of that?

A Either late November, December or possibly -- this is '62, excuse me -- or possibly the first two or three days of '63. It may have been as late as January the 3rd, '63. I am not sure of the date.

Q Could you identify the person who gave you these instructions?

A My superior, Mr. M. W. Conn sent word -- I was in the same office -- sent word across the hall for me to com into his office, and I did.

Q And what instructions did Mr. Conn give you at that time.

MR. MARKS: May we have who was present, your Honor?

THE COURT: Yes, certainly.

Q Could you tell us who was present if anyone --

THE COURT: As I understand it, he had apparent authority, at the very least, to talk to these people. Ther is no claim he didn't have authority.

MR. JEMISON: No. I'm simply developing the instructions that were given by Mr. Conn, your Honor.

THE WITNESS: Do I go ahead?

THE COURT: First tell us who was present.

A Mr. Conn, Mr. Page, a Mr. Shippee and myself.

Q And would you tell us what instructions, if any, were given to you at that time?

A My instructions from Mr. Conn --

MR. MARKS: May we have the conversation as to who said what?

THE COURT: Yes, we will take the conversation, but the Court understands Mr. Shippee was there when he got his instructions; is that correct?

MR. JEMISON: That is the testimony of the witness, your Honor.

THE COURT: Tell us the substance of what was said.

A The letter Mr. Learned had written to Mr. Shippee was displayed, and Mr. Conn instructed myself to work with Mr. Shippee on point 3 of this letter, which, as I recall, was to counsel and assist, if you wish, with the design, construction and operation of the proposed project. That's the best I recall.

THE COURT: He told you to do this, if you wish?

THE WITNESS: The letter stated -- the letter was to Mr. Shippee, your Honor.

THE COURT: He's asking you what you were directed to do.

MR. JEMISON: Yes, Your Honor. I believe the

the witness testified he was --

MR. MARKS: I object to that.

THE COURT: Yes. Frame the next question, Mr. Jemison.

Q Mr. Fischbeck, I hand you Plaintiff's Exhibit 69 and ask you to identify that letter.

A This is a letter from Mr. Learned, Mr. Stanley Learned to Mr. Shippee.

Q And item 3, is that located on that letter?

A It is.

Q And is that the item that you were instructed to do?

A It is.

MR. JEMISON: Your Honor, Plaintiff's Exhibit 69 has already been admitted in evidence.

THE COURT: That's correct.

MR. JEMISON: I believe it has been read to the jury. I will read item 3 which is only two lines, your Honor.

(Mr. Jemison read to the jury from Plaintiff's Exhibit 69 in evidence.)

Q Mr. Fischbeck, after receiving these instructions from Mr. Conn did you meet with persons outside of the Phillips organization concerning a proposed project in Puerto Rico?

A Yes.

Q Could you identify the first such meeting?

A It is difficult for me to identify these meetings as to dates, places and times.

We met several times, sometimes in my office, sometimes in other offices, but I did meet the Shippee group, shall I say, several times between our first meeting whenever it did occur and our last meeting, which was March 27.

Q What year?

A 1963.

Q Was a proposed project for Puerto Rico discussed with these people during this period of time?

A Yes.

Q Can you describe the project which was described to you?

MR. MARKS: I object to that. I would like to have each conversation, when it was, who was there and what was said and by whom.

THE COURT: Sustained. Let us take the meetings

in order to the extent this witness can recall and say what was said in substance.

Q Starting with the first meeting at which a proposed project in Puerto Rico was discussed with you, during this period of time either November or December of 1962 through March 27, 1963 and taking the first meeting even though you may not be able to pinpoint it in time, will you tell us what the subject matter of that meeting was as best you can recall and who said what?

A As I recall in the first meeting I had with Mr. Shippee and I believe it was Mr. Willey's office or the Shippee-Willey office, whatever it might have been, Mr. Shippee explained that he was endeavoring to try to obtain an import allocation and that he needed someone who was skilled In the refinery industry, in the petrochemical industry, to be a party to the project in Puerto Rico.

Along about the first meeting -- wait a minute, I got the time -- I don't know --

Q It is within the time frame that you talked about?

A This must have been in January. The first meeting surely would have been in January and I am assuming it was January.

At that time he handed to me, I assume Mr. Shippee,

one of the two handed to me, the work that had been prepared by the Universal Oil Products Company which was a schematic diagram of a topping plant or a skimmming plant or a primary distillation unit, whichever we may understand best, and some petrochemical being made from the naphtha.

These petrochemicals were the ordinary ones, toluene, benzene and the Zylenes.

And I took this which I had seen before, a part of it was the same data that Mr. Coan had submitted previously to the best of my knowledge. I studied it casually simply because there was really not much there to study --

MR. MARKS: I object and ask that that be stricken.

THE COURT: I will permit the part where he said he studied it casually, it will remain.

Q Please proceed.

THE COURT: You asked him for conversations with the persons he described as the Shippee group. If that is the first conversation where they showed him this flow chart let's get on to the next one.

Q Mr. Fischbeck, did Mr. Shippee or any of the other people attempt to describe or express in words what they were trying to do besides get an oil import alocation?

MR. MARKS: I object to the form. Let us have the conversation, what did Mr. Shippee say and the witness say and Willey say?

THE COURT: Yes.

Q As best you can recall, Mr. Fischbeck, can you give us the exact words that Mr. Shippee said or as nearly as you can come to them?

A I don't recall the early meeting beyond my testimony I don't believe.

Q Did there ever come a time between this first meeting and thedmeeting you described as your last meeting of March 27, 1963 when Mr. Shippee did describe in words or in substance what kind of project he had in mind?

MR. MARKS: Again I think we should have each of the conversations.

THE COURT: I make the same ruling. Take the meetings as they proceed and let him tell us what if anything the persons he characterized as the Shippee group said to him and what he said to them.

MR. JEMISON: Fine, sir.

Q Mr. Fischbeck, would you identify if you can the second meeting, approximately when it occurred and who was present?

A I met with Mr. Tom Young either February 20 or

March 8, one of those two dates and I am not positive which one of the two dates it was, at which time he showed a list of officers that he proposed or Shippee proposed -- excuse me, the Shippee group I presume proposed -- to include in the import allocation permit or application for the permit.

My name appeared there and I was very surprised.

Q What was your statement to Mr. Young at that time concerning that?

MR. MARKS: May we have what both sides said, what Mr. Shippee said and Mr. Young said?

THE COURT: Just Mr. Young was at that meeting as I understand. Mr. Shippee was not present, is that right?

THE WITNESS: As far as I can recall.

THE COURT: Let us have the conversation. He showed you this and said this is it.

A I said you must remember that I am employee of the Phillips Petroleum Company and in Phillips Petroleum Company I have acquired through the years quite a lot of benefits and I object to my name being on this.

Q Did Mr. Young say anything in response to that statement?

A Mr. Young informed me that, "Mr. Fischbeck, I am

very close to the management of Phillips Petroleum Company. I know your people in the Adams Terminal in Houston and on my recent trip between Houston and New York I stopped and visited with your officials in Bartlesville and we discussed this matter with them at that time and they said it was perfectly all right with them."

Q Did it come as a surprise to you, Mr. Fischbeck?

A You bet it did.

Q What was your belief at this point in time with respect to this situation?

MR. MARKS: I object to his belief.

THE COURT: Sustained.

Q Mr. Fischbeck, did any Phillips executive or official ever authorize you to permit your name to appear in this brochure as an officer?

MR. MARKS: I object to the form unless he discussed it.

THE COURT: Whether it was discussed or he received any written instructions or oral instructions concerning the matter, he may be asked, from any Phillips executive.

Q Did any Phillips executive authorize --

THE COURT: You can't use the conclusory word.

Q Did any Phillips executive ever tell you that

it was okay for your name to appear as an officer in this brochure?

A No.

THE COURT: Have you completed that particular meeting?

MR. JEMISON: I have one other aspect of that meeting, your Honor.

Q Mr. Fischbeck, I hand you what has been marked as Plaintiff's Exhibit 214 and can you identify the page to which I have opened the brochure?

A I can.

Q Will you do so for the record, please?

A This is a page or an exact replica of the one I discussed with Mr. Young in this particular meeting.

Q There is some handwriting which appears in the area of your name. Is that your handwriting?

A It is not.

Q Did you furnish the information which is reflected in that handwriting?

A I did.

MR. MARKS: Your Honor, I suggest that the page be separately marked so we know what we are referring to.

THE COURT: If you like, certainly.

(Plaintiff's Exhibit 214-E was marked for

identification.)

THE COURT: Have you completed that meeting?

MR. JEMISON: Not yet, your Honor.

Your Honor, at this time I will read the paragraph identified with Mr. Fischbeck.

(Exhibit read.)

(Continued on next page.)

Q Mr. Fischbeck, what was your purpose in providing the information which is reflected in changes i that document?

MR. MARKS: I object to the form of the question.

THE COURT: Sustained. If he said what his purpose was, he can testify as to what he said.

Q Mr. Fischbeck, did you state to Mr. Young you purpose in providing this corrected information?

MR. MARKS: Your Honor, I object again. The question is what did he say to Mr. Young, and what did Mr Young say.

THE COURT: Yes, what did he say to him. Let get on with it.

Q As best you recall.

A As best I recollect this meeting, Mr. Young explained to me, well this is just an application, and the is nothing really binding about an application, and I said "Well, if it will help your cause in obtaining this import allocation, leave it in."

Q Mr. Fischbeck, did you have a meeting on or about March 27, 1963, concerning this proposed project in Puerto Rico?

A I did.

THE COURT: At this point we will suspend for the weekend. I wish you, members of the jury, an enjoyable weekend. We will resume our labors 10:15 in the morning on Monday.

You may now withdraw from the courtroom.

You may be excused until Monday also, Mr. Fischbeck.

(Jury left the courtroom.)

THE COURT: Thank you, gentlemen. We will be in recess.

(Adjourned to Monday, January 19, 1976 at 10:15 a.m.)

PRUDENTIAL OIL CORPORATION

vs. 67 Civ 3748

PHILLIPS PETROLEUM COMPANY

January 19, 1976
10:30 a.m.

- - -

(Trial resumed.)

A U G U S T D A L E F I S C H B E C K,

resumed.

MR. JEMISON: Your Honor, Mr. Fischbeck has a little bit of a hearing problem, particularly if you're talking to him from the side.

THE COURT: All right. I will try to shout. Take your chair.

(Jury present.)

THE COURT: Good morning, members of the jury.

You may continue, Mr. Jemison.

DIRECT EXAMINATION CONTINUED

BY MR. JEMISON:

Q Mr. Fischbeck, did you have a meeting with Mr. Shippee and others on or about March 27, 1963, concerning a proposed project in Puerto Rico?

A I did.

Q Would you tell us the circumstances as to how

this meeting came about?

A PRior to this time, from the beginning of our discussions, I was having a lot of difficulty in understanding exactly what Mr. Shippee expected of us.

MR. MARKS: I object, your Honor.

THE COURT: Yes, I will sustain the objection. Strike out the answer.

Q Would you tell us about the meeting, how it was brought?

THE COURT: Did he call it? Did somebody else direct it to be held? Ask a question so there will be no problem about the answer.

Q Who initiated the meeting, Mr. Fischbeck?

A I am not sure. Mr. Shippee or someone in his group advised me that Mr. Ter Porten, of Brown & Root Engineering Company, was in town. I had known Mr. Ter Porten for many years, and I naturally would like to have visited with him, and I suggested, or else he suggested, I don't know which, that we have a meeting and bring Mr. Ter Porten, and we could all get together.

Q And where was this meeting held?

A It was held at the Talisman Cafe, not far from our office.

Q Do you recall who picked up the check for this

meeting?

A Yes, I did.

Q Would you tell us what was discussed at this meeting, identifying who said what, as best you can recall?

A I renewed acquaintances with Mr. Ter Porten. We had a very sociable visit and one of my objectives in this meeting was that I asked Mr. Shippee to define exactly in specific terms what he expected of us to do in this project that he was endeavoring to promote.

Mr. Shippee advised me that he wished for us to bring the marketing study up to date, using present day prices that were present at that time, and engineering considerations that would be appropriate for the plant.

Q Was anything else said or discussed that you can recall?

A That was the substance of our general discussions.

Q Mr. Fischbeck, up to the time of this meeting, had any of what you had done to date, or up to that time with Mr. Shippee and his group, involved paragraph 3 of Mr. Learned's letter of November 13, 1962?

A Nothing whatsoever. Mr. Learned's letter instructed --

MR. MARKS: I object to his characterization.

THE COURT: He can tell what he did. It will

save time. The answer will stand, nothing whatsoever. The rest of the answer I will strike out.

Q Following this meeting with Mr. Shippe and Mr. Ter Porten and others on March 27, 1963, do you recall every again meeting with Mr. Shippee or these gentlemen concerning a proposed project in Puerto Rico?

A I do not.

Q Following this meeting on March 27th did you write a letter to Mr. Conn concerning the discussions which you had been having for over a year on a proposed project in Puerto Rico?

A I did.

Q Mr. Fischbeck, I hand you an exhibit which has been marked Plaintiff's Exhibit 99, and can you identify that for us, sir?

A It is the letter I sent to Mr. Conn. I prepared the letter and sent it to him.

Q On or about the date which appears there?

A On the day that appears here.

mR. JEMISON: Your Honor, I understand that Plaintiff's Exhibit 99 has already been offered and received in evidence.

I will read it at this time.

(Mr. Jemison read to the jury from Plaintiff's Exhibit 99, in evidence.)

Q Mr. Fischbeck, following the writing of this letter, March 28, 1963, did you leave your office in New York for a while?

A I took a two-week vacation in St. Petersburg, Florida, which extended the first of April up to approximately April the 15th. I was back in the office for a day or two or three, and then went to Europe, spending some time in London and some time in Copenhagen, and from Copenhagen I returned to my office late of April the 26th, I think is correct.

Q Mr. Fischbeck, when you returned to the office around the 15th of April, did you receive some information concerning this latest proposal?

A I did.

Q Mr. Fischbeck, I hand you an exhibit which has been marked Plaintiff's Exhibit 103. Can you identify that for us, sir?

A Yes. This is a memorandum written by Mr. Frank Page, advising the people who received copies of the decision made in my company.

Q And did you receive this on or about the 16th of April?

A I saw this on April the 16th.

MR. JEMISON: Your Honor, this again is an

exhibit which has already been offered and received, and I will read it at this time.

THE COURT: If it's already offered and received, it is presumed genuine and you need not lay any foundation with this witness. If this is in evidence and it shows on its face that he received a copy, the Court will assume in the absence of evidence to the contrary, that he did.

MR. JEMISON: All right, sir.

(Mr. Jemison read from Plaintiff's Exhibit 103 in evidence to the jury.)

Q Mr. Fischbeck, following your return from Copenhagen in the latter part of April 1963 did you write a letter to Mr. Nate Shippee?

THE COURT: If the letter is on the pretrial list just put the letter in evidence.

MR. JEMISON: All right.

I will now read Plaintiff's Exhibit 107.

(Exhibit read.)

Q Mr. Fischbeck, did you at any time tell any person that Phillips would prepare a marketing study for any proposed project in Puerto Rico?

A I did not.

Q What is a marketing study in the refinery and petrochemical industry?

A A marketing study in the refinery or petrochemical industry entails finding the most realistic price or as close to the realistic price as possible on all products that are proposed to be produced.

That would entail also the economics of the plants supplying these products and to ascertain whether or not the plant would be profitable and the marketing study would have to take in a very comprehensive study of the facility and expenses and product prices.

Q Did the Phillips New York International

Department have the manpower to prepare a marketing study?

A They did not.

Q Where would this study have had to been parped?

A That would have been prepared in Bartlesville.

Q Do you know what the minimum cost for a marketing study of this nature would have been?

A I think the minimum cost for it I would estimate to be at least $100,000, at least.

Q Did you at any time tell anyone that Phillips would apply for an import quote on behalf of any proposed project in Puerto Rico?

A I did not.

Q Did you tell anyone at any time that Phillips would complete any import application for anyone?

A I did not.

Q During the period in 1962 and 1963 when you were conferring with people outside of Phillips with respect to the Puerto Rico project, were you ever told or furnished with any technical information by these persons concerning a proposed project in Puerto Rich which was not common knowledge in the refinery and petrochemical industry at that time?

MR. MARKS: I object to form.

THE COURT: Sustained.

Q Were you during the conferences which you have described during your testimony in this court ever furnished with any technical information concerning a proposed project in Puerto Rico which was not common knowledge in the petrochemical industry at that time?

MR. MARKS: Objection as to form. I think that is the same question and I will make the same ruling.

MR. JEMISON: Your Honor, is it the form of the question?

THE COURT: I am sure it is as to the form. You may bring out what he was furnished and then you may also ascertain if he knows, whether those things he was furnished were common knowledge in the petrochemical industry. But it is a compound question and calls for a conclusion.

Q Mr. Fischbeck, would you describe for the Court and jury what you were furnished during the course of your conferences with respect to the proposed project in Puerto Rico as best you can recall?

MR. MARKS: Can we have a time frame on this?

THE COURT: Yes, I think there should be a time frame ascertained and by whom he was furnished such materials.

Q Yes, will you, please?

THE COURT: Anything he was furnished that isn't already in evidence?

MR. JEMISON: I think he already described what he had been furnished.

THE COURT: I think they have exhibit numbers, do they not?

Frame a new question.

Q Mr. Fischbeck, would you start with the first item handed to you or furnished to you during the course of any of these meetings, describe it for us, please?

A As I recall the first information handed to me concerning this project was the UOP schematic flow diagrams showing many potential and possible processing arrangements.

Q Was there anything --

THE COURT: Can we fix the time and who did it?

Q Yes.

A This information as I recall was supplied to me by Mr. Shippee and Mr. Young may have been present during one of our very earliest meetings, which I believe was in the month of January.

Q Was this the same or different information Mr. Jack Coan had previously furnished you?

A As I recall it was exactly the same as what I

had seen before.

THE COURT: Will you answer the question? He is asking with respect to Mr. Jack Coan, not what you saw before. Listen to the question carefully. It can be answered yes or no.

A Yes, it was the same information that I had previously been supplied to he best of my knowledge by Mr. Coan.

Q Was there anything in that information which was not common knowledge within the refinery and petrochemical industry at that time?

MR. MARKS: I object to the form of the question.

THE COURT: I will permit him to answer it.

I assume the refinery and petrochemical industry to mean the industry.

A There was absolutely nothing in this that was not common knowledge in either the petrochemical or the refinery industry to the best of my knowledge.

Q Subsequent to having been furnished with the information that you just described, did you ever receive any additional or different technical information to the best of your knowledge?

A Nothing that I recall of significance.

THE COURT: That is not a satisfactory answer.

The jury will judge whether it is significant or not.

Q Will you describe what you received?

THE COURT: Just tell us what you received.

A Restate the question, please.

Q Following the receipt of this information which you just testified to, did you receive any other or additional information of a technical nature concerning a proposed project in Puerto Rico?

A I do not recall any additional technical information.

Q With respect to non-technical information will you describe the first such non-technical information that you recall receiving concerning a project in Puerto Rico?

A Well, the only non-technical information that I recall seeing was the page on which my name was listed as an officer of that company.

THE COURT: Didn't you see the whole booklet?

THE WITNESS: Yes.

THE COURT: You didn't just see a single page in it?

THE WITNESS: Seeing and examining, excuse me. I saw the whole booklet, yes.

Q With respect to what you saw, the whole booklet, did you see any concept or was any concept or idea explained

to you which you regarded as new or novel?

MR. MARKS: I object to the form of that question, your Honor.

THE COURT: It is a compount question. You will have a chance to cross-examine the witness in due time.

Separate the question, would you, pleas?

Q With respect to the material furnished to you, did you see contained in that material any concept which you regarded as new or novel?

A Absolutely not.

Q During the course of the conversations which you held regarding a proposed project in Puerto Rico, did anyone express an idea or concept which you regarded as new or novel?

MR. MARKS: I object to the form of these questions.

THE COURT: You ought to limit it to persons from Prudential, Shippee, Young or Willey.

MR. JEMISON: I will limit the question.

Q During the course of conversations with Mr. Shippee, Mr. Young, Mr. Willey, did any of those gentlemen express any idea or concept which you regarded as new or novel?

A No, sir.

Q At approximately what point in time did the petrochemical industry become a significant industry, Mr. Fischbeck?

A Along about 1950.

Q What has Phillips' position been in the petrochemical industry since that time?

A Phillips has been one of the leaders in the development and implementation of the petrochemical industry in the United States.

Q What has Phillips' patent position been in the petrochemical industry?

A Among the most important of all the companies in the United States.

Q Did any single event stand out with respect to the petrochemical industry becoming a significant industry?

A In my opinion the Universal Oil Products Company platforming process was of very valuable contribution to the petrochemical industry and to the petroleum industry.

Q When was this process developed, approximately?

A The first commercial unit that went into operation as I recall was the old Dutch refinery in Michigan about 1953.

Q Did Phillips have access to this platforming

process patented by UOP?

A Yes.

Q Will you describe the situation under which Phillips had access to this process?

THE COURT: Does it matter? I will assume it had lawful access.

MR. JEMISON: It had lawful access to the process under a cross-licensing agreement.

THE COURT: I will assume it had lawful access to it.

MR. JEMISON: The point I want to make is that they have had access since its development.

THE COURT: He may be asked that.

Q Would you describe the situation under which Phillips had access to this?

A Phillips and Universal Oil Products executed a cross-licensing agreement on all patents Phillips had in the petroleum field and all patents that UOP had in the petroleum field in 1939. Phillips was not obligated to make payment to any other party for anything and neither was UOP to Phillips.

This cross-licensing agreement would give rights to one another and did not include the patents that UOP controlled or owned relating to catalytic cracking. That

was the only exception that I know of.

Q With respect to the platforming process was Phillips able to use this process without any payment of any kind of license or fee?

A It was.

Q Did there come a time when your responsibilities with respect to refinery projects was assigned to someone else.

A Yes.

Q Could you tell us when that was?

A June 1st 1963.

Q To whom was this responsibility assigned?

A Mr. Roy Waldby.

Q Did you ever review the general subject of Puerto Rico with Mr. Waldby?

MR. MARKS: I object to the form. Let's have a time and place.

THE COURT: I assume we will get it, Mr. Marks. I assume the answer to this question is yes or he wouldn't have asked him.

Ask him another question.

Q Will you tell us when and where this discussion occurred?

A Along about the middle of August in Mr. Conn's

office in New York.

Q August of what year?

A 1963.

Q Did this review include your past experience with respect to the proposed and existing refineries in Puerto Rico?

MR. MARKS: I object to the form and ask that the question be who said what at this meeting.

THE COURT: Yes, who said what and where and who was present.

A In this meeting --

Would you restate the question, please?

Q Would you please tell us who said what at this meeting in August of 1963?

A Mr. Conn asked me to meet in his office with Mr. Waldby, Mr. Page and himself for the purpose of reviewing all of our present at that time refinery considerations that we were working on. This included Puerto Rico.

I reviewed all of our considerations that were in effect at that time and also which included the Puerto Rican project.

Q Did you make available to Mr. Waldby any files that you may have had with respect to Puerto Rican projects?

A Not specifically so because all of our files

were really available to all members of the office. All he had to do was pick up everything in the Puerto Rico file but I would have had had he asked anything about it.

Q After discussions with Mr. Waldby in August 1963, your experience with Puerto Rico projects, have you seen or had anything to do with any type of project in Puerto Rico?

A Not to my knowledge.

MR. JEMISON: No further questions.

CROSS EXAMINATION

BY MR. MARKS:

Q Mr. Fischbeck, do you have any pention or retirement benefits from Phillips?

A I do.

Q Is that what you live on at the present time? Is that the source of your support at the present time?

A It is.

Q How long did you work for Phillips?

A About 27 years.

Q When did you start with them?

A December 1st, 1946 and I retired October 1st, 1973.

Q You have great loyalty to the company?

A Sir?

Q Do you have great loyalty to the company?

A I have loyalty to all of my employers.

Q Do you have a consultant's contract of any kind with Phillips?

A I do not.

Q Are they paying for the expenses for your testimony here?

A Paying my expenses here.

Q Did they do this in connection with your testimony before trial?

A I believe the deposition was made while I was still employed, was it not? I believe it was.

Q Do you own any stock, you or your family, in Phillips Petroleum?

A Repeat the question, sir?

THE COURT: Move along to something else.

Q Do you live in Bartlesville, sir?

A Yes.

Q Is that a Phillips Company town? You heard it referred to as that?

A Not necessarily in those terms.

Q How many people live in Bartlesville?

A About 35,000.

Q How many work for Phillips?

A About 5000.

Q Did you engage for Phillips in the formation of new companies overseas in the petrochemical industry during the course of your employment by Phillips?

A I did.

Q Can you tell us the nature of your responsibilites?

A My responsibility was to seek out projects in foreign countries that would employ Phillips' patented processes and then either to license this patented process to people or to form a joint venture.

Q Did you form for Phillips joint ventures with other companies during the course of your employment in connection with petrochemical manufacturers?

A With the aid of our legal department and treasury department we formed a number of companies.

Q Just describe some of them?

THE COURT: Do I have to take that? This is not proper cross-examination. I will assume there was a hundred of them. Let's get this trial finished. Talk about Prudential.

Q Were some of those joint ventures formed with smaller companies who had come to you with their ideas for petrochemical projects?

THE COURT: Is that a difficult question?

THE WITNESS: Well it is because, your Honor --

THE COURT: You can answer the question yes or no.

Were some of them smaller companies than Phillips?

THE WITNESS: Were some of the companies smaller than Phillips?

THE COURT: Yes.

THE WITNESS: Sure.

THE COURT: Of course they were.

Let's move along, Mr. Marks.

Q Directing your attention to March of 1962, did you have conversations with Mr. Coan about a Puerto Rican petrochemical project?

A I did.

Q Did you tell Mr. Coan that you thought it would be a good idea to keep the number of participating companies in the Puerto Rican project down to a very small number?

A I did, and that had reference --

THE COURT: Just answer the question, don't make a speech.

a.m.

jklt 1 Fischbeck-cross

Q In your discussions with Mr. Coan, did you indicate to him that one of the reasons that you thought that would be a good idea was to maximize the profits of those who would participate in this project in Puerto Rico?

A I do not recall that statement.

Q Was that one of the factors that you discussed with him?

A Not to my knowledge.

Q Did you believe in your discussions with Mr. Coan that he and Mr. Brown were promoters who were trying to obtain an oil import allocation?

A Restate the question, please.

Q Did you believe that Mr. Brown and Mr. Coan, in your discussions with them, in March of 1962, were promoters who were seeking an oil import allocation?

A Yes.

Q You told Mr. Coan that Phillips was not interested in participating in the petrochemical project in Puerto Rico or in producing the petrochemicals in Puerto Rico, is that right?

A Would you define what you mean by "petrochemical project"?

Q Did you tell Mr. Coan that Phillips was not interested in participating in a project in Puerto Rico

involving the manufacture of petrochemicals in April of 1962?

A The project -- I will have to answer the question no.

Q You didn't tell him that?

A MAy I?

THE COURT: Well, did you tell him in words or substance that you were not interested in behalf of Phillips?

THE WITNESS: We were discussing a petroleum refinery to process crude oil at that time.

Q Do you recall discussing with him the production of petrochemicals in the Puerto Rican project or not?

A I do.

Q Didn't you tell him, in words or substance, that Phillips was not seeking to participate in producing petrochemicals in Puerto Rico?

A It may have -- I will answer it yes, yes.

Q Didn't you also tell him that you couldn't see any advantages in Phillips' participating in the Puerto Rican project?

A My letter to him so stated.

Q Was that a fair summary of your views?

A It definitely was.

Q You had reviewed that with your management?

A Did I review that with my management? Is that the question?

Q Yes, sir.

A I'm sorry, I couldn't hear. Yes, otherwise I would not have written that to the man .

Q Did you return all of Mr. Coan's materials to him?

A Everything that I knew of.

Q You gave it back to him?

A Yes.

Q That was your practice?

A Yes, sir.

Q When somebody would approach you with some concepts or ideas for a new joint venture or a new project and they would leave materials with you and you were done examining them, was it your practice to return them to the people who had brought them?

A A very broad question, but the answer is yes.

Q Wasn't one of the reasons that you had returned those materials was that it was a Phillips policy not to retain them?

A It was my policy and I'm as sure it was Phillips' policy.

Q And the reason for the policy was to avoid any misunderstanding about who brought the project to Phillips' attention, isn't that right?

A I wanted nothing that I did not have a legal right to retain.

Q And so you would return these materials?

A Absolutely.

Q You were also told in June of 1962, were you not, Mr. Fischbeck, that Phillips had told Mr. Brown that they were not interested in this project?

A I was apprised of that.

Q So far as you knew as of June 1962 this project was a dead letter, was that right?

A It was.

Q When did you first hear that Prudential was going to be working with Phillips on this project?

A When Mr. Conn called me into his office.

Q At that time did Mr. Conn show you Mr. Learned's letter?

A He did.

Q Did this represent a complete turn about of Phillips' position so far as you knew?

A I really didn't know what this project was about at that time.

Q Well, in April, Phillips had told Mr. Coan they weren't interested and in June they told Mr. Brown they weren't interested.

Now, it is November and Mr. Learned is offering to help build a petrochemical complex, isn't that true?

A What was the last part of your question, sir?

Q I say in April, you told Mr. Coan that Phillips wasn't interested.

A That's right.

Q And in June Phillips told Mr. Brown, "We're not interested." Now it's November and Mr. Learned is writing a letter to Prudential saying, "We are interested in helping you build a petrochemical project," isn't that right? Wasn't that a complete switch?

A It may have been.

Q Weren't you surprised?

A Well, many projects come back a number of times. I had no way of knowing what management's decisions on this had been, I mean, what their viewpoints were.

Q What was your title, sir, at the time?

In November, 1962.

A I was manager of project development.

Q International projects?

A International.

Q This fell within the scope of your responsi= bilities, is that right?

A I found out later that it did.

Q Well, Mr. Fischbeck, doesn't that letter say that Phillips is going to designate a representative to work with Prudential?

A Whatever it says, I was assigned to work on part 3.

Q You were the representative?

A One of the representatives.

Q You mean there was more than one representative?

A Mr. Page and I were assigned to work on this point 3.

Q What is point 3?

A That's something I'd like to tell you about.

Q Well, if you want to read it, you can.

A To counsel and assist, if you wish, in the design and the construction and operation of the proposed facilities .

Q Did you counsel with Mr. Shippee from time to time concerning the design of this project?

A Mr. Marks, there was no design considerations in our discussions, no construction considerations, and no operation considerations.

Q How many times did you meet with Mr. Young?

A Oh, two or three or four times

Q How about Mr. Page, didn't he sit in on these meetings?

A Mr. Page attended I think most all of the meetings.

Q How about Mr. Jack Coan, did he attend most of these meetings?

A Not that I know of.

Q How about Mr. Smith?

A Mr. Smith accompanied Mr. Page to most.

Q What was Mr. Page's title?

A He was in charge of sales, international sales, New York office.

Q How about Mr. Smith?

A He was Mr. Page's assistant.

Q How about Mr. Jackson?

A Mr. Jackson worked for me.

Q Did you understand this was a project that was going to be sponsored by the Prudential Oil Company?

A Restate the question, sir.

Q Didn't you know that this was a project that was going to be sponsored by the Prudential Oil Company?

A All I knew about this at this time, Prudential

Oil Company was seeking to obtain an import allocation for crude oil.

Q Didn't you understand that they were going to manage and sponsor this project?

A This theoretical project, yes.

Q The project that you worked with them on.

A As a possibility.

Q Is it your answer that you did understand they were going to manage and sponsor this, Prudential Oil?

A It was a theoretical company, and I assumed from what they said, they would be in charge of it.

Q And you met several people, didn't you, in the course of your discussions from Prudential Oil?

A Yes, I met Mr. Willey, I met Mr. Young, I met Mr. Shippee.

Q You had meetings in their offices on some occasions?

A We met in some of their offices.

Q And they met in your offices?

A Well, very little. My office was awfully small and there wasn't room for all of them to sit down in it. Now my meetings with Mr. Shppee, as far as in my office, was mostly at the Talisman Cafe, because there we could sit down at a big table, all get around it and all talk.

Q Did you know that Mr. Shippee was chairman of the board of Prudential Oil Corporation?

A He so stated.

Q Did you know that Mr. Willey was President of the corporation?

A I don't recall.

Q Do you know that Mr. Young was acting as a consultant?

A Yes.

Q Did you know that the objective of their work was to obtain an oil import quota for this project?

A I thought that was their only objective.

Q Was an oil import quota a valuable asset to have in or about November of 1962, Mr. Fischbeck?

A It was.

Q And a $50,000 -- excuse me, a 50,000 barrel a day oil import quota was something that anybody in the oil industry would be drooling over, isn't that true?

A Everybody was trying to get them.

Q And if you could get one, that was going to be worth what, Mr. Fischbeck, at that time?

A Assuming all marketing considerations were the same it would be worth about $1 a barrel.

Q Well, you had 50,000 barrels a day, that would be

wroth $50,000 a day to the man with the company who held that quota, is that right?

A If he could import all of the products into the United States and receive the same prices that he would have had had it been produced next door.

Q Other things being equal, that quota would have been worth something on the order of $18,000,000 a year, is that right?

A You multiply 365 by some number, and probably around 18,000,000.

Q That was one of the reasons why you were meeting with these people, was it not, sir, because you knew there were going to be tremendous equity benefits to this project if they got that oil import quota?

A I assume that is the reason I was assigned to meet with them.

Q Didn't you think, Mr. Fischbeck, that if they managed to get this oil import quota by building a project in Puerto Rico, and if Phillips helped them, that Phillips would share in these benefits?

A I don't know to what extent Phillips would have shared in the benefits, if they had the oil import allocation. I don't know what they proposed to finance, what they proposed to do.

Q Didn't you understand that Phillips was in some way going to share in the dollar value or the benefits that were going to flow from this quota and that is why you were meeting with these people?

A I had no direct numbers, and I did not know to what extent. Let's say in some manner PHillips may have profited, to some degree.

Q You understood that at the time?

A At the time of this letter?

Q Or in your meetings in January, 1963.

A Yes, sir.

Q You didn't think that Phillips was doing this for love, did you?

A I kind of wondered at the time.

Q You knew, Mr. Fischbeck, didn't you, when you had your meetings with Mr. Shippee, with Mr. Young and Mr. Willey , that Mr. Anderson was interested in this project, didn't you?

A I did not.

Q Are you sure of that, sir?

A I'm positive.

Q When for the first time did you learn this, or if you ever learned it?

A Well, I think, if I recall correctly, about the

first time I knew Mr. Anderson was associated with this project was along about the time I was talking with my counsel, before we gave my deposition.

Q That would be 1972 or thereabouts?

A Thereabouts, yes.

Q Now, Mr. Fischbeck, I show you what's been marked as Plaintiff's Exhibit 97 for identification, dated March 11, 1963, and makes reference to you, sir. Have you ever seen that document before?

Didn't you receive a copy of that document back, with handwritten notations that appear on it?

A Well, apparently I have seen this document before, because this is my writing right here, 3/11. Let me read this.

MR. MARKS: Yes, sir. I will offer this document in evidence.

THE COURT: No objection?

MR. JEMISON: No objection.

THE COURT: Received in evidence.

THE WITNESS: I simply don't recall --

(Plaintiff's Exhibit 97 was received in evidence.)

(Mr. Marks read from Plaintiff's Exhibit 97 in evidence, to the jury.)

Q Now, didn't you --

THE COURT: Who was "John"?

Q Who was John, sir?

A John Harris, who was in charge of our -- well, he worked with crude oil transportation in Phillips.

Q Now, in fact, Mr. Fischbeck, didn't Mr. Shippee advise you specifically that Mr. Anderson was working with him?

A I don't recall Mr. Shippee talking about Mr. Anderson. He might have.

Q I show you what's been marked and received in evidence as Plaintiff's 101. Is that a copy of a letter that Mr. Shippee sent to you and you received on or about April 4, 1963?

Did you receive that, sir?

A I received this letter at some time. At this time I was not in the New York office. At some time later I may have seen this letter. But I don't see where I have acknowledged receiving it.

Q Is it your testimony, sir, -- is that your handwriting?

A That is not my handwriting.

Q Is that your date stamp?

A That is not my date stamp.

Q Is it your testimony that you did not receive this, sir? Weren't you responding to this letter when you wrote back to Mr. Shippee at the end of this month, April, 1963; weren't you responding to this letter?

A Restate your question, sir.

Q You say you never saw this letter, is that correct?

A I said those were not my stamps.

Q Did you ever see this letter?

A Let me read it again. I have seen it some time or other.

Q Wasn't that letter in front of you when you made your response to Mr.Shippee at the end of that month?

A Not necessarily.

MR. JEMISON: Has this exhibit been offered and received in evidence?

MR. MARKS: Yes.

THE COURT: 101.

THE CLERK: Yes, on the 6th of January.

(Mr. Marks read from Exhibit P-101 in evidence, to the jury.)

Q Now, Mr. Fischbeck, you knew of Mr. Anderson's relationship with Phillips Petroleum Company, did you not?

A I did not.

Q Well, didn't you know that Mr. Anderson had a retainer to bring international projects to Phillips' attention at this time?

A I did not.

Q Weren't you the manager of the international development group?

A I was.

Q How about Mr. Chapman, didyou know that Mr. Chapman was associated with Mr. Shippee in this?

A His name was mentioned.

Q I believe you have testified previously that you were shown a copy of Plaintiff's Exhibit 214, which is this blue brochure of Prudential's, is that correct?

A I don't know about the blue one. I saw some of the data.

Q Why don't you just review it and satisfy yourself whether you have seen this before.

THE COURT: I think he has testified he's seen it before and I won't have the trial delayed. I want to tell all attorneys in this room this case has to be finished. We are all losing patience, including our hard working jurors here.

Let's get on with it. Frame another question.

The man has already testified earlier today that

he had seen this book.

Q Wasn't this the booklet that Mr. Shippee and Mr. Young showed you in your conversations with them?

A I don't know what this book has in it. Primarily my considerations were the schematic flow diagrams and the UOP data.

Q Didn't you read the material that they furnished you?

A I doubt that I read all of the material. Certainly I doubt it. I may have. But it didn't concern me because I was assigned to work with the design, construction and operations; not --

Q There is material in this document, sir, relating to each of those subjects. Did you read that?

A If it related to those subjects, I read it.

Q Now, with regard to the management of this company, wasn't there a list of officers and directors?

A There was this page in it. That I can say, for sure.

Q You knew, did you not, that Mr. Thomas Young was going to be the president and chief operating officer?

A If it's on here, that's when I learned it, and that is the first one. The answer is yes.

Q And did you know that Mr. John W. Little, who

was the vice president of marketing of Prudential, was going to be the vice president of marketing for the new project?

A Not specifically.

Q Isn't that on the same page?

A It's down there, but I didn't specifically remember that.

Q Didn't you know that Mr.Frank Larson, who was a director of Prudential Oil was going to be the vice president in charge of finance for the new project?

A It had no connotation to me whatsoever. I knew this(indicating).

Q You knew that you were going to be the vice president of operations?

A I knew this is what they showed me.

Q And that listed you as vice president of market development and you changed it?

A I'm not a marketing man.

Q You changed it to "operations"?

A I didn't change it.

Q You told them they should change it to "operations"?

A I told them if there is any consideration there, I'm not a marketing man.

Q You're an operations man?

A I work with design, construction and operations.

Q Operations involves output from the plant, doesn't it?

A Refinery.

Q Yes, that is whatever petrochemicals that would be produced would be in the operations?

A They're vague, my friend. If any petrochemicals would be there, in connection with the refinery, it would have been.

Q How about the board of directors of the company, Mr. Fischbeck? Didn't you know that Mr. Nathan Shippee was going to be the chairman of the project?

A I doubt that I even reviewed this. It had no significance to me. The thing that had significance to me was my name was on there.

Q Did it have any significance to you, sir, that Mr. Young, Mr. Willey, Mr. Neikirk, Mr. Little and Mr. Shippee, all from Prudential, were going to control the board of directors of this company in the proposed document that you looked at?

A It had no significance to me. This is a company that was proposed to be formed. It did not exist. As far as I was concerned, I could resign any day.

Q Did you?

A No.

Q Did you ever tell them to take your name out?

A They never paid me anything, I never was on the payroll.

Q Did you ever tell them to take your name out?

A I told them to take my name out of there; I didn't believe that, but he said, he explained that "This is merely to go into an application. We have to fill all of these blanks out," and I told him, "If this will help you get an application, we will leave it in."

Q Now, in addition to the material that I have shown you, you also looked at the financial plan, did you not, sir, the money that it was going to cost to build this?

A Mr. Marks, I have a comment I'd like to make in relation to my name being on that page.

Q I will come back to that.

THE COURT: Please, gentlemen, don't argue. Just answer the question.

Q You saw the financing plan, sir?

A Yes, but I did not study it.

Q Sir, the financing plan showed that the management group, that is, Mr. Shippee, Mr. Willey, Mr. Young, the Prudential group, they were going to receive 4,000,000 shares out of the 15,000,000 shares that were

were going to be issued on the project, isn't that right?

A When and if they got an import allocation.

Q You understood that.

A I don't remember the exact number.

Q You understood, sir, didn't you, that Prudential was going to receive about 27-1/2 percent of this project for their work; isn't that what that indicated to you?

A It may indicate, but it had no connotation, because this was a non-existing company, no oil import allocation. This was perhaps --

Q It was a plan, is that right, and if the plan worked Prudential was going to get 27-1/2 percent of the stock of the company, isn't that right?

A I do not recall

Q Doesn't this refresh your recollection, this page on the financial plan, what Prudential was going to receive?

A It does not.

Q You didn't think that Prudential was doing this for love, did you?

A I wondered.

Q You knew that Mr. Leaned's letter was in the brochure, did you not?

A I don't recall that it was specifically.

Q Didn't you know that there were references to Phillips throughout this brochure? Didn't you know that?

A PRobably.

Q That Phillips was going to be an important part of the presentation?

A This was merely a brochure for presentation to the Oil Import Board.

Q That was it, nothing more?

A As far as I was concerned, nothing more.

Q Wasn't it a matter of concern to you, sir, that Phillips name was going to be associated with this project in the presentation to the Oil Import Board?

A That was really not my concern. That was the concern of my management.

Q Did you also understand that this brochure was going to be shown to the Puerto Rican government?

A You must recall I was assigned to work in the design, construction and operations. It was not some of the things you infer.

Q Now, did you understand that this was going to be presented to the Puerto Rican government?

A Well, I thought that the thing, if they ever got it, excuse me, if they ever got it together would be presented to the Oil Import Board allocation.

Q You knew from Mr. Shippee's letter that I showed you just a moment ago that he had been in communication with Mr. Diaz-Hernandez. Did you know who he was?

A No, I did not

Q In your discussions with the Prudential group, did they say to you that they wanted a flexible core plant for this project that would increase its chemical production over a period of time?

A Would you please define a core plant?

Q Did they describe to you a concept of a core plant?

A What is a core plant?

Q Did that term come up?

A Please define for me what you mean by a core plant.

Q Was the term "core plant" used in your discussions?

A It was used, and I have completely overlooked the term until some time later, but undoubtedly it was used, but I'd like -- you must define what do you mean by a core plant?

THE COURT: Are you telling us that when this was used that you didn't know what it meant?

THE WITNESS: I thought it meant a refinery, and

a platformer.

THE COURT: Did you ever tell anybody that you were in doubt as to its meaning?

THE WITNESS: The project itself we discussed had to do, your Honor, with a refinery, a topping plant, and a platformer.

THE COURT: All right,

Q When did you first hear the word "core" used in connection with this project, sir?

A Well, apparently from the first time that I was associated with it, but I didn't recall it, and I was, later on --

Q Do you remember testifying in this case in 1972, sir, at page 123, line 11, and being asked this question, and giving this answer, 11:

"Q And the refinery was referred to as core?

"A It may have been but it seems to me like the first knowledge I have of the word 'core' was a long time after that because the first time I had heard it I asked the person " -- you changed the answer to the person -- "'What are you talking about?' It may have been referred to, but I don't recall it.

"Q Do you know who you first heard the word 'core' from?"

And your original answer, sir, was:

"A I have no idea but years later," and then you changed that and you wrote, "I may have heard the term from Mr. Keeler in 1966."

MR. JEMISON: Your Honor, I object. I don't see any inconsistency. I don't know the purpose of reading this. The witness was testifying --

THE COURT: I don't have to hear argument on it. He may be asked whether he gave those answers.

Q Did the very first page of the brochure that Mr. Shippee showed you in 1962, on the very first page say, "Core Plant required"? Isn't that true?

A It's true.

Q And you testified under oath in 1972 that Mr. Keeler told you for the first time, you never even heard the word until 1966, is that right?

A I completely overlooked the word "core," I guess because I had heard of CORECO, the Commonwealth group, and I didn't pay any attention to the word "core."

Q Did you ever return Prudential's materials to them?

A I don't know in the final analysis that I had any Prudential material, but I will state this, that any material that I had I sent with my letter to Mr. Conn.

I sent everything I had at that time. I'm not even sure that that contained Prudential's material. It may have.

Q You testified that you met with Mr. Young on either February 20 or March 8th and he showed you an officer's list and you objected?

A That is correct.

Q That he had told you he had gone to Bartlesville and discussed the matter with the highest officials in Bartlesville and they told him that it was okay to use your name and you went ahead, right?

A He said he had visited with our officials in Bartlesville.

Q And said that it was okay for you to use your name?

A Said it was okay.

Q You testified in this case on March 23, 1972 at page 48 starting at line 9, aend referring to your statement that you met with Mr. Young and had this conversation on February 20 or March 8th:

"Q At the meeting of January 3, 1963 did you know Mr. Young?

"A Not to my knowledge.

"Q What is the date that you place as your first meeting with Mr. Young?

"A The only day that I can factually place as my first meeting with Mr. Young to my knowledge is

March 8th.

"Q This is reflected in the diary which you produced that is Exhibit 148?

"A Correct."

And at page 49, line 24:

"Q I show you an entry in Mr. Young's diary for February 20, 1963 which is part of Exhibit 152 and ask you whether that refreshes your recollection that you met with Mr. Coan and Mr. Shippee on that date?

"A I don't recall the meeting.

"Q You don't recall the meeting referred to in that diary entry?

"A It could have happened but I don't recall."

Then at page 53 --

MR. JEMISON: Your Honor, I object to this and I fail to see what counsel is reading is possibly inconsistent with the witness' testimony.

MR. MARKS: He said he couldn't remember these meetings, Judge.

THE COURT: We will take a brief recess at this time. The jury is excused.

(Jury left the courrroom.)

THE COURT: You may step out, Mr. Fischbeck.

(Witness left the courtroom.)

THE COURT: Gentlemen, I get the distinct impression that we are wasting time. Thd witness proved very little if anything in his direct examination and the cross-examination is proving that his mental powers are somewhat limited and that is about it.

MR. MARKS: Your Honor, I think it goes further than that.

THE COURT: Let's get to the gist of it. We have to move forward with this trial, we really have to.

All right, we will be in recess.

(Recess.)

THE COURT: You may resume, Mr. Marks.

A U G U S T D A L E F I S C H B E C K , resumed.

CROSS EXAMINATION (Continued)

BY MR. MARKS:

Q At page 53 of your transcript, line 12:

"Q Mr. Fischbeck, calling your attention to the meeting of March 8, 1963, can you tell us where the meeting took place?

"A I cannot.

"Q Do you recall anything about the meeting other than Mr. Young was there?

A Certainly. I recall that I objected.

Q Page 79 of the transcript, sir, were you asked this question and did you make the following answers:

"Q Do you recall the next time you met with Mr. Shippee or any member of his group after the meeting of March 8 about which you already testified?

"A I do not."

I will skip the next question.

"Q Can you tell us us what happened at that meeting to the best of your recollection?"

MR. JEMISON: I object to the skipping of the question. He ought to have it in continuity so that the witness --

THE COURT: I will have him read the intervening question.

Q "Q Do you recall whether you had any meeting with them after the one of March 8th?

"A I am not sure. As I said previously I met with these gentlemen two or three times during this period at least and I don't recall the specific dates of those meetings. Some are reported probably.

"Q Can you tell us what happened at that meeting to the best of your recollection?

"A Specifically I do not."

Was that your testimony, sir?

A As far as I recall.

Q Now, you testified here that you vigorously objected to your name being used?

A I objected to my name being used. It came as a complete surprise to me.

Q You testified that Mr. Young lied to you, said that he had been out to Bartlesville and that top management had approved it? That is what you testified here on Friday, isn't it?

MR. JEMISON: I object to it. There is no reference --

THE COURT: I will sustain the objection.

Q Did you testify that Mr. Young told you that he had been out to Bartlesville and got the okay?

A I did.

Q Was that true?

A As far as I know.

Q Sir, I refer you to page 79 of the transcript in this case before trial -- let me ask you, Mr. Fischbeck, it would have stuck in your mind if you objected to your name being used and Mr. Young told you that he had got the okay?

"A At one of the meetings, I don't know which one, but at one of the meetings they had prepared a type, shall I call it brochure or presentation to the Government in order to obtain an import allocation. I remember criticizing the report a little bit because it seemed to drag, not dressed up and I didn't think it was in shapre to present to a governmental body.

"At that time they were talking about making fancy petrochemicals, at least inducing other people to make fancy petrcchemicals and I suggested to them why don't you put some pretty pictures of nylon or something in here which would show what you are talking about if that is what you are now talking about. I think it was at this same meeting, I am not sure, but I think it was at this same meeting they showed me where they listed my name as a member of a non-existent company. I characterized that, I thought it was rather a little comical and I characterized this as a bunch of horse manure and told them I didn't even fit in that category that they had there but if it served their purpose in any way to write in exactly what I had done which was as I recall 30 years of experience in manufactur-

in and sales of petroleum products and maybe one other category. That was about the extent of it. I don't know whether it was the eighth meeting or some other meeting."

You never testified previously, sir, did you, that you objected to it or Mr. Young lied to you or anything like that, did you, until Friday; isn't that right?

THE COURT: I don't know that he testified on Friday that Mr. Young lied to him.

Q You didn't testify Friday to anything about Mr. Young going to Bartlesville or anything about your objecting to your name in the report, isn't that true?

A As far as I know. I testified to the fact that I objected to my name. I did not testify previously that I know about him going to Bartlesville.

Q I just read your testimony. Is it still your testimony that you ever testified that you told anyone you objected?

MR. JEMISON: I object to that question.

THE COURT: Overruled.

Q You did tell them that if it would serve your purpose in any way they could use it?

A After they explained what they wanted to use it for.

Q Anybody at Phillips ever tell you that you should not appear in their application?

A They did not.

Q Did anybody from the Prudential group ever refuse to negotiate a contract with Phillips to your knowledge?

A The subject of negotiating contracts I don't recall coming up in our discussions.

Q Did they ever tell you they weren't interested in negotiating?

A Interested or non-interested?

Q Did you report to any of your superiors at any time that they were not interested in talking about a contract?

A I don't think the subject of negotiating a contract came up in our discussions with the Shippee group either for or against.

Q Didn't Phillips work with Prudential in studying different types of oil samples for the fuel and chemicals that could be produced? Didn't you do that with them?

A Mr. Shippee requested of Mr. Page a type of crude oil which I shall say is a synthetic crude oil, crude oil made up of various fractions that might fit in with

some of the interest of other people that he was talking with. Mr. Page endeavored to obtain to the best of my knowledge such a sample of crude oil.

Q Didn't Phillips begin to do some studies with regard to the oil samples?

A I don't know of any studies.

Q You testified did you not, sir, that Phillips didn't do anything to assist in regard to this project?

A Say that over again, sir.

Q I show you what has been received in evidence as Plaintiff's Exhibit 91, which is a letter addressed to Mr. Jackson, your assistant, of February 9, 1963 with some attachments and ask you whether that doesn't refresh your recollection that Phillips did studies of crude oil samples in connection with working with Prudential jointly on this project?

A Yes, this is a letter to me from Mr. Jackson. We spent some time over this letter trying to figure out what they were talking about. It was in this letter at this time that I learned that Monsanto was involved. We discussed it in the office.

Q Weren't there charts attached prepared by Phillips?

A I don't know who prepared that.

Q They were attached to the letter you got from your assistant, Mr. Jackson?

A Well, they might have been. This is a UOP schematic.

Q What about the first sheet?

A The first sheet, I don't know whether it is UOP or Phillips, I really don't. It is about crude.

Q Wasn't Mr. Smith engaged in looking for poor sources of oil that might work in this refinery project?

A Not particularly so. He may requested some crude samples but I don't really know the extent of Mr. Smith's work. He worked for Mr. Page.

Q Didn't Mr. Shippee tell you that he wanted to set up a core plant that would anticipate the growth of a chemical industry in Puerto Rico?

A I think in general that was his purpose.

Q Didn't he describe ro you a concept by which the refinery would be flexible in that it would increase its stream of petrochemicals as time went by?

A Mr. Shippee talked about a flexible refinery but the refinery Mr. Shippee was talking about was not a flexible refinery.

Q Didn't he indicate to you that he wanted to set up a refinery that chemical users would be attracted

to the core plant because there was low cost raw materials being produced, that the core plant would begin to increase its output of petrochemicals, wasn't that the idea?

A The core plant would begin to increase its output of petrochemicals?

Q And less petroleum products?

A The core plant per se did not produce petrochemicals.

Q Didn't the core plant produce certain types of petroleum by-products?

A The core plant as I defined it is a refinery plus a platforming. The platforming affluents can be used, that is they can be use benzene, ttoluene and zylene.

Q They are petrochemicals?

A They are petrochemicals once they are separated and purified, not before. Prior to this time, part of the affluents from the stream in the platforming, they are not separzte chemicals.

Q Wasn't the idea to maximize the flow of these petrochemicals that you just identified as users of these chemicals were then induced to come down to Puerto Rico because there would be low cost raw materials for their plants? Isn't that Mr. Shippee's concept?

A Mr. Shippee talked about that but his reasoning on this was fallacious.

a.m.

jklt 1 Fischbeck-cross

Q I didn't ask you about his reasoning. I asked whether he described the concept to you.

A He talked a lot about such things.

Q Did he also tell you that there was no need to get a commitment from a chemical user before the main plant was built?

A There was no need to get a commitment --

Q A prior commitment from a chemical company to buy the output before building the plant?

A He had no way of obtaining a prior commitment.

Q He told you that?

A He didn't tell me that, but there was no way he could obtain a prior commitment.

Q Wasn't, in fact, that Mr. Coan and Mr. Brown's whole idea, that they would go about and try and get the prior commitment before they did anything down there, they wouldn't even present this to the Department of the Interior unless they had a contract from a chemical user?

A Mr. Shippee recited the failures of the other group.

Q In regard to what I just asked you about?

A In regard to their inability to have someone come down and depend on them as a sole source of supply, chemical companies simply do not do that.

Q In fact, didn't Mr. Shippee ask you to work on marketing projections?

A Oh, yes, he asked a lot of things.

Q Well, didn't he talk to you about market projections being essential for the study?

A He talked about marketing projections, but my assignment had to do with design, construction and operations.

Q But you had a staff of people, including people that did marketing studies, did you not?

A My staff of people did not do marketing studies.

Q Did you work with Bartlesville on any project, sir?

A Not on marketing studies.

Q On all these joint ventures that you have testified about, weren't marketing studies prepared for your use by Phillips?

A We knew what the markets were of those things. I knew what they were at the time. I didn't know what these were.

Q You'd have to study that?

A Yes, but I don't do that work

Q Who does that work, sir?

A There is a group of engineers in Bartlesville

that make economic appraisals of potential projects.

Q Didn't Mr. Shippee send you this letter which has been received in evidence as Plaintiff's Exhibit 98 on March 19, 1963?

A Yes, Mr. Shippee wrote that letter. He wrote it to me. And I sent it to Mr. Page. Mr. Page is in marketing. Ask for Mr. Page's comments. You read the comments, I can't.

MR. MARKS: No, I can't. Mr. MacCrate has the original. Perhaps you can take it out.

Q Can you make out Mr. Page's comment? It is a reference to Mr. MacCormack, I believe.

A I cannot make out what this is. This is C.M. MacCormack. That is S and T, supply and transportation.

Q What is the next word, is that "reports Phillips"?

A Can you see it? I can't.

Q That's what it appears to me to be, "reports Phillips."

A I couldn't say,because I don't really see that well.

Q Then it says "FOB Mayaguez"?

A It could.

Q And then there's a reference to 80 percent.

A 80 percent what?

Q Do you have a recollection of talking to Mr. Page about the marketing aspects?

A I do not. Not on that specific item. I would like -- this letter, I did not see, right here.

Q Which one?

A Excuse me. This letter that Mr. Shippee wrote to me on March the 19th -- yes, I say it on March the 20th. There is a different letter.

Q That is just a duplicate copy that your counsel has produced. Doesn't that letter talk about Mr. Young meeting with you to complete the marketing projection?

A Oh, sure.

Q What was that in reference to?

A I have no idea. Mr. Shippee was doing his best to induce usto make a market study that I had no intention of making.

Q But you never told him that, did you?

A Oh, yes.

Q When did you tell him that?

A A number of times. I do not make marketing projections.

Q I mean Phillips. Did you tell him that Phillips wasn't going to make the marketing studies when he asked you

for the marketing studies, or did you just say that is not my department, but I'll see?

A Mr. Page was with me. Mr. Page would have handled anything on marketing studies.

Q Mr. Shippee sent you, did he not, a chart or an outline which showed a core plant, fifty-two percent production of feedstock for chemicals, didn't he attach that?

A Yes.

Q And he asked you to work up some materials on that, did he not?

A Mr. Shippee was my superior.

Q I didn't ask you whether he was your superior. I asked you whether he requested that you work up materials for inclusion in the brochure on marketing.

A Mr. Shippee requested we make market studies.

Q In fact, wasn't there a discussion that this plant was going to be located in Mayaguez by Mr. Young who had been down there and taken a tour of the island?

A There could have been. I don't recall the site location.

Q I show you a copy of what's been marked 130 for identification and ask you whether you received a copy of Mr. Smith's letter to Mr. McCormack which analyzed some

economics of the refinery based on prices at Mayagues, Puerto Rico?

A Yes, I saw this.

MR. MARKS: I will offer this, your Honor.

MR. JEMISON: No objection.

THE COURT: It may be received in evidence.

(Exhibit D-130 was received in evidence.)

Q Now, in fact, Mr. Fischbeck, in Phillips' January 1964 brochure, they stated that the plant was going to be located in Mayaquez, isn't that right?

MR. JEMISON: Your Honor, I object. There is no showing that this witness was ever shown the document.

THE COURT: Well, it certainly doesn't relate to his direct examination. I will sustain theobjection.

Q Now, in fact, Mr. Fischbeck, didn't Prudential tell you that in order to obtain the import quota that they were going to have to develop a plan to show a large percentage of the output from the core plant being petrochemicals?

A The answer to your question is no. Mr. Shippee stressed making products from which petrochemicals could be made.

Q And he wanted to maximize those types of products from the core plant, isn't that right?

A In normal operations of platformer --

Q I'm asking what your conversations were with Mr. Shippee.

A Restate your question.

Q In your conversation with Mr. Shippee, didn't he tell you that the idea of the core plant was to increase these possible feedstreams for petrochemicals, and that that was necessary to get the import quota?

A Mr. Shippee wanted to show, and he so stated he wanted to show all the material going to a mythical petrochemical complex possible.

Q He told you he wanted to send it to a mythical complex?

A Well, that's what it was.

Q Did he tell you that?

A He said a complex that would extract petrochemicals.

Q Did you discuss with Mr. Shippee and Mr. Young the manner in which you could maximize petrochemicals?

A Truly, I do not recall maximizing petrochemicals in any of my discussions with them in that connection.

Q Didn't Mr. Shippee and Mr. Young meet with you and didn't they suggest that if you used partially refined oil products instead of crude to charge the core plant that you would increase the petrochemical flow?

A They repeated some of the same things that Mr. Brown had previously talked about, as using naphtha.

Q They did that?

A Oh, sure, we talked about using naphtha. Everybody knew about using naphtha.

Q And in fact, that is what Phillips ultimately did in the plant, isn't that right?

A Sure, we charge naptha to our plants in our own company.

Q But in Puerto Rico?

A Puerto Rico -- it is my understan ding that we do use naphtha today.

Q Did you discuss that with Mr. Shippee and Mr. Young, way back in February 1963?

A Yes, I did.

Q All right.

A So did the Brown proposal.

Q In your memorandum to Mr. Conn, which you previously testified about, you told him, did you not, sir, that any consideration of setting up a petrochemical production in Puerto Rico by Phillips would just be competing with another operation that Phillips had?

A I did.

Q You never told Mr. Shippee that, did you, or

Mr. Young or Mr. Willey?

A I am sure that we discussed it to a certain extent because Mr. Young worked nearby some of our petrochemical operations in Houston and Mr. Young was familiar with our operations.

Q You mean you told them you didn't think that Phillips should go into this project, because it would compete with other enterprises that Phillips was in, is that your testimony, you told Mr. Shippee and Mr. Young that?

A I'm sure we discussed the possibilities of competing with ourselves.

Q That's why you worked with them from November until April, is that right?

A I worked with them from November until, well, whatever our first meeting date was until March the 27th, because I was assigned to.

Q And then you wrote to them at the end of April?

A Yes, when I returend.

Q So you worked with them for a period of six months on this, didn't you?

A Oh, no. Let's assume that nobody knows when the first meeting was. Let's assume it was December 15th. From December the 15th until March the 27th is the period that I met with them, in these considerations.

Q Mr. Fischbeck, didn't you tell Mr. Shippee that you would help to arrange for Phillips to present the project by reproducing their brochure?

A As I recall I did say something about helping Mr. Shippee with his brochure and it was after, I think it was after my final letter of April the 29th to Mr. Shippee. They needed some copies. I saw no reason not to make them for him; if they wanted to present it; it was merely a gratuitous thing.

Q And this was done at Phillips?

A It was done in our office there.

Q Are you sure that you delivered all those copies to Prudential? You didn't retain any?

A I have no knowledge of the handling of these whatsoever.

Q How many? Was it about fifty?

A I don't know.

Q Now, Mr. Shippee wrote to you about the marketing again, didn't he, in April, and he enclosed a copy of a letter that he had sent to Mr. Chapman, is that right?

A That is correct.

Q Now, the letter to Mr. Chapman, which is in evidence, states that you proposed that Phillips, that is you, Dr. Fischbeck, proposed that Phillips take the Prudential

outline as a guide and bring it up to date with current prices and engineering costs of the plant and so forth, is that right?

A That is not correct.

Q That's what the letter states.

A That's what the letter states.

Q And Mr. Shippee thanked you in his April 3rd letter in appreciation for your suggestion to re-work the project, is that correct?

A That is not correct.

Q Did he thank you in the letter for doing that?

A He thanked me, but it is not correct.

Q And he told you that he had sent letters to Mr. Chapman and to Mr. Diaz and to Mr. Anderson and to the financial advisers stating that you would do this, is that right?

A He said that.

Q Did you ever tell Mr. Shippee that you were not going to do these studies until your letter of April 29, 1963?

A I had consistently delayed doing anything on market studies as I have testified previously, I don't make market studies.

Q You mean Mr. Shippee was writing to all these

people saying you were doing the marketing studies and there were no such thing, is that what your testimony is?

A My testimony is that I did not initiate it and I did not agree to make a marketing study.

Q But you didn't respond to his letter of April 3rd, where he thanked you and said you were going to do the study.

MR. JEMISON: Your Honor, the witness has testified that he was not even in the office at that time.

MR. MARKS: We are coming to that.

THE COURT: The jury will know what he testified to.

Let's move along, please.

Q In fact, I have your diary here for 1963, sir, and you were in the office, and you had this letter, didn't you, the April 3rd letter on your desk when you got there, and you were there on April 15th and 16th all day, weren't you?

A That could have been.

Q Here it is, does this help you refresh your recollection?

A I was in the office on this day.

Q All day on the 15th of April, all day on the 16th of April.

A Might have been all day the 15th and the 16th, yes.

Q Didn't it occur to you, sir, that you might call up Mr. Shippee and say, "What are you talking about in your letter? What marketing study?"

You didn't do that, did you?

A On what day now?

Q Well, on April 15th or 16th?

A It was during April the 16th that Mr. Page told me, and it is the previous exhibit that Mr. Keeler had so instructed Mr. Chapman that we were no longer working on this project.

Q That's not what I asked you. I asked whether you called up Mr. Shippee and told him you weren't going to do this.

A I did not. I assumed he already knew it. I did not.

Q You were also, by the way, you were also in the office late in March, were you not, after your meeting with Mr. Shippee, March 27th, you were there the 28th, the 29th, the 30th of March and you never told Mr. Shippee then that you didn't know what marketing study he was talking about, did you?

A I had submitted my letter to my management.

Q Did you tell Mr. Shippee you were going to do that?

A I told him that before we left our meeting on the 27th that I intended to bring my management completely up to date on everything that transpired and I wanted a management decision, whether or not we proceed anymore.

Q You say you didn't understand what Mr. Shippee's proposal was, is that correct?

A What proposal do you have reference to?

Q Concerning the Puerto Rican project.

A Mr. Shippee's proposal concerning the Puerto Rico project as I understood it had to do with building a simplified crude distillation unit and a platformer.

Q Did you have any lengthy conversations with Mr. Shippee and Mr. Young?

A Very little on this sort of thing because Mr. Shippee was not versed in refinery and petrochemical language.

Q Does your diary help to refresh your recollection about your meeting of March 27th with Mr. Shippee and Mr. Young that lasted for four and a half hours?

A We stayed at the hotel until the man wanted his money, excuse me, I mean at the Talisman, until the man wanted his money.

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THE COURT: By the man, you mean the waiter?

THE WITNESS: The waiter, excuse me.

Q It wasn't just you, it was Mr. Smith?

A Mr. Smith, Mr. Page, myself.

Q Mr . Young?

A Mr. Young.

Q Mr. Shippee?

A Mr. Shippee, Mr. Ter Porten.

Q You spent four and a half hours reviewing this project, didn't you?

A No. We were exchanging pleasantries. We were having a meal. We visited Mr. Ter Porten. The project was mentioned. You can bet your bottom buck it was.

Q That resulted in Mr. Shippee's letter of March 29th to Mr. Chapman, where he said that you proposed that you were going to do the marketing study, isn't that right?

A I don't know what caused Mr.Shippee to do that. It brought forth my letter to my management saying, "Where do we go from here?" That's what it brought forth for me.

Q In fact, at this March 27th meeting, sir, didn't Mr. Shippee tell you and Mr. Page and Mr. Smith that it was necessary to obtain the oil import quota for Phillips to play a much more active role and for Phillips to get it, that is get the quota, didn't he say that?

A You have a double question there. Mr. Shippee asked --

Q Let me break it up.

THE COURT: He started to answer. Let him answer. Go ahead. We'll get along.

A Mr. Shippee stressed and stressed that it was necessary for Phillips to play a more important role in obtaining this crude oil import allocation, but I do not recall ever Mr. Shippee nor any of his group, stating that it would be necessary for Phillips to obtain the import allocation.

Q Sir, did you testify in 1972 in this case at page 92, line 7:

"Q Do you recall anything else that was discussed at the lunch?

"A We discussed the generalities of the project. I endeavored to determine or ascertain rather, just what is the status. At this time, as I recall, Mr. Shippee insisted that in order to obtain a crude oil import allocation that it would be necessary for Phillips to take a more active part and get one which I thought was a switch over the original understanding."

Now, isn't that what you testified under oath?

A If that's what it says, that's what I testified.

THE COURT: The balance of the answer ought to be read.

MR. MARKS: The balance:

"We generally visited. In view of that, I thought the time had come for my management to dire any further course of action that we had with Prudential, hence I wrote my letter the next day."

Q Mr. Shippee did tell you, did he not, sir, that it was necessary for Phillips to get the oil import allocation?

A I have no recollection of that.

Q Was your memory better in 1972 than it is today?

A Probably so.

Q You didn't mention that in your direct testimony about that meeting, did you, sir?

A Sir?

Q You didn't mention anything about Mr. Shippee talking to you about getting the quota in your direct testimony when your own counsel asked you about that meeting, did you?

A I tried to answer the questions as best I could.

Q You wrote to Mr. Shippee on April 29th and you told him that you had not been able to get back to him any

sooner, is that right?

A I was busy. I was gone two weeks. I was over in Europe for two weeks, and I came back to my office -- I returned to the States on the 26th. I don't know whether the 27th was Friday, Saturday or Sunday. I don't know.

Q You had been in the office on April 15th and 16th.

THE COURT: We have had all that, Mr. Marks. Let's move along.

Q Weren't you playing both ends against the middle, Mr. Fischbeck? You were telling Mr. Shippee one thing and you were telling Mr. Conn another, isn't that what you were doing?

A Absolutely not.

Q I show you your diary entry, sir, for July 3rd of 1963, and ask you whether you had a conversation with Mr. Miller Conn on that date in which you gave him your views on "dirty pool;" do you recall that, sir?

A Yes, sir.

Q Will you tell us what that had reference to?

A It had reference to me obtaining additional employees to assist in our efforts.

Q What does that have to do with dirty pool?

A Well, I didn't get them.

Q Now, Mr. Conn went down to see Mr. Chapman in August, 1963; isn't that right?

A I don't know.

Q He was your superior, was he not?

A Sir?

Q He was your superior, Mr. Conn?

A OH, yes, excuse me. He was my superior. I didn't hear you. Pardon me, sir.

Q Now, Mr. Conn went down to see Mr. Chapman in August of 1963 to talk about a Puerto Rican petrochemical project, didn't he?

A Did he? I ask you. I don't know.

Q Weren't you the man who was working on the project?

A When I wrote my letter to Mr. Conn, and I wrote my letter to Mr. Shippee, I was no longer connected with the project.

Q Didn't Mr. Conn return from a meeting with Mr. Chapman in Washington and bring with him a brochure that you recognized?

A Not to my knowledge.

Q Didn't he bring back Prudential's brochure?

A I don't know. Haven't any idea.

MR. MARKS: Your Honor, at this time I am going

to offer Defendant's 136, which is a memorandum prepared by Phillips, I believe by Mr. Conn.

THE COURT: Any objection?

MR. JEMISON: Yes, your Honor. There's been no foundation for the admission of this exhibit.

THE COURT: If it is in the pretrial order I am going to take it. Is it listed?

MR. MARKS: Yes, it is a defendant's exhibit.

THE COURT: I will take it. You don't want it renumbered, do you?

MR. MARKS: No.

MR. JEMISON: Your Honor, we have no objection.

THE COURT: All right. It is listed, is it not?

MR. MARKS: Yes, your Honor.

(Exhibit D-136 was received in evidence.)

THE COURT: It has nothing to do with this witness as far as I can see.

MR. MARKS: I'm going to try to tie it in, your Honor.

THE COURT: All right.

(Mr. Marks started to read from Exhibit D-136 in evidence to the jury.)

MR. JEMISON: I regard this as highly improper cross examination. The witness has said he knows nothing

about it.

THE COURT: I think that's true.

MR. MARKS: Your Honor, if you want --

THE COURT: It may be shown to this witness to refresh his recollection, but don't read it now, unless he says he has seen it before.

Q I show you Defendant's Exhibit 136 and Exhibit J-40, which has previously been received in evidence, which is a memorandum of a meeting of Mr. Conn and Mr. Slack of the Phillips group with Mr. Oscar Chapman in Washington on August 7, 1963 and ask you in reading those two documents, whether that doesn't refresh your recollection that Mr. Conn went down in August of 1963 to meet with Mr. Chapman to discuss a Puerto Rican petrochemical project.

A I have no knowledge of this specific meeting. I may have been in the States at that time and I may not. But I know nothing specifically of this, of these meetings.

Q Well, didn't you --

THE COURT: Is Mr. Conn alive?

MR. MARKS: Yes.

THE COURT: All right Then let's finish up with this witness and if you want to know about this meeting, ask Mr. Conn.

Q Well, in fact, Mr. Fischbeck, didn't you get a

Telex from Mr. Conn marked "Urgent" on August 9, 1963, telling you that you should immediately go and brainstorm with Mr. Keeler about a Puerto Rican petrochemical complex?

A I did.

Q I show you Plaintiff's Exhibit 122 in evidence, and ask you if that isn't the Telex that you received from Mr. Conn on August 9th, just two days after his meeting with Mr. Chapman in Washington?

A I received this telegram in Bartlesville. It was marked "Urgent."

Q That isn't an usual communication in Phillips, is it, that you get urgent telegrams, sir?

A From Mr. Conn, yes.

Q And did you go to see Mr. Keeler and brainstorm with him about the Puerto Rican petrochemical complex?

A I have no recollection of meeting with Mr. Keeler on this subject right here.

Q Didn't you meet with Mr. Conn?

A He was here out in Barltesville.

MR. MARKS: May I read this, your Honor? It is brief.

THE COURT: All right. It was sent to this witness. It may be read.

(Mr. Marks read from Plaintiff's Exhibit 122

in evidence to the jury.)

Q Now, didn't you in fact have meetings with Mr. Waldby and with Mr. Conn in August of 1963 to discuss the very same petrochemical comples that you had been discussing in April up until -- from November to April with Mr. Shippee and his group?

A I had a meeting with Mr. Conn and Mr. Waldy and Mr. Page along about -- I think in my diary there you will find it -- along about August the 19th, or thereabouts. Anyway, I reviewed for them, as I have testified, the considerations that came up during the time I worked with the Shippee group.

Q Didn't you know this was the exact same project that you were discussing with them in August of 1963, that you had been discussing with Mr. Shippee?

A I only reviewed my portion of this. I also reviewed with them all other refinery considerations that we were pursuing throughout the world at that time.

Q I show you a diary and ask you if that refreshes your recollection that you had a lengthy discussion of three hours on August 12, 1963 with Mr. Waldby, with Mr. Conn and Mr. Elliott about Puerto Rico?

A This says 8.30 to 10, Mr. Waldby Puerto Rico. 10 to 10.30, Mr. Holland on job write-ups -- that is to do with personnel matters.

10.30 to 12 Mr. Conn, Mr. Elliott, Mr. Waldby about refinery, Puerto Rico.

Q Mr. Fischbeck, at that meeting didn't you discuss the proposed petrochemical project in Puerto Rico?

A The proposed petrochemical project?

Q Yes. Did you discuss a proposed petrrochemical project in Puerto Rico?

A We discussed the refinery and what had been characterized as Mr. Shippee's core project which was a simplified crude oil refinery and a platformer and a Shippee's ideas about other things.

Q Did Mr. Conn and Mr. Waldby tell you why they were interested in your reviewing this material with them?

A They did not.

Q Didn't you understand they were interested in the same project?

A I did not.

Q Page 116 of your transcript, you were asked by Mr. Farrell about this meeting at line 9:

"Q Did you discuss at this meeting on August 12 a proposed petrochemical complex?

"A Not to my knowledge."

Was that your testimony, sir?

A Petrochemical.

MR. JEMISON: This is perfectly consistent with what the witness just testified.

THE COURT: Objection overruled.

Q Didn't Mr. Conn bring back something from Washington that looked awfully familiar to you, sir?

A If he did I never saw it.

Q Didn't Mr. Conn come back from Washington with Prudential's brochure which you had examined yourself in 1963, earlier that year?

A I have no knowledge of what Mr. Conn may have

brought back with him from Washington. No knowledge whatever.

Q Who would have that knowledge?

A Mr. Conn.

Q How about Mr. Waldby, wasn't he assigned after August to take over this project?

THE COURT: Let's not argue with the witness who has knowledge of something.

MR. MARKS: I have no further questions.

THE COURT: Any redirect examination?

MR. JEMISON: Yes, sir, just one or two questions, your Honor.

REDIRECT EXAMINATION

BY MR. JEMISON:

Q Mr. Fischbeck, would you describe for the jury an event that occurred at the airport before you received a telegram entitled urgent?

A Mr. Conn and I did not work together well. Our viewpoints were quite different.

At the airport prior to my going to Bartlesville on this particular incident he called me at the airport and he was wanting me to do a larfe number of things which I didn't really have time to do down there. And about that time the plane was about ready to leave and I said to Mr.

Conn, "I can't talk on this phone any longer because if I do I will miss the plane."

He said to miss the plane and wait and go later. I had no idea of missing the plane and I told him I talked long enough and didn't want to talk any further and good-bye.

Mr. Conn is a very wonderful man, he works very well but we could never dovetail our actions. He was my superior, I did my work, he did his work and it was practically no communication between us at all. I regret to say that is true.

Q Is that the reason that the telegram marked urgent had little meaning to you?

A A telegram from Mr. Conn marked urgent had no meaning to me whatever, no particular significance.

Q Mr. Fischbeck, you mentioned in response to counsel's question that Mr. Shippee's reasoning was fallacious. Could you describe what you meant by fallacious reasoning?

A A well oriented and organized chemical company will not locate itself near an offshore refinery and be dependent upon one source of supply. They would be a captive customer unless that chemical company had some control over their source of supply that they would use. They would then be a captive customer and no one wants to

be a captive customer of any plant.

Q Was it Mr. Shippee's concept that he could induce people to become captive of this plant?

A Mr. Shippee learned by this time from the Brown experience they could not induce chemical companies to come down and do that. He learned that.

Q Did this come as a surprise to you or is this something new to you?

A No, sir. I think it came as a surprise to Mr. Shippee that the Brown group found it but it was common in refineries, it is common in business -- no one wants to be dependent on a single source of supply.

THE COURT: I don't quite understand.

Does the fact that you are located next to a refinery mean that you are dependent on only that refinery and can't bring in material from some other source if the refinery fails to perform?

THE WITNESS: It is my understanding that at that time that would entail another import allocation, would it not?

Q Mr. Fischbeck, when you talk about the fact they would not be a captive of a refinery, does it relate to the fact that you are off in Puerto Rico and away from other sources?

A It does because unless you had other sources in Puerto Rico you would be dependent on importation to keep your project operating. People don't want to be dependent.

Q What do people demand who want to use the products of a refinery or build a plant? What do they demand?

A Either have some control over the production of that project or have two sources of supply. Otherwise they are captive customers.

MR. JEMISON: I have nothing further.

MR. MARKS: Nothing else.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Call the next witness.

MR. JEMISON: Mr. Richard Holland to the stand, your Honor.

- -

THOMAS R. HOLLAND, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JEMISON:

Q Mr. Holland, are you part of the Phillips

organization?

A I am.

Q In 1963 were you working for Phillips International Department in New York?

A Yes, sir.

Q What were your responsibilities at that time?

A I was administrative assistant in charge of all office affairs of the New York office of the International Department.

Q During 1963 were you requested to make several copies of a report pertaining to a project in Puerto Rico?

A I was.

Q Will you describe this incident, stating where it took place and who was present and what was said by the people present?

A It was Friday, in mid-afternoon. Mr. Fischback came to my office and asked if I would step into his office, which I did.

Mr. Fischbeck introduced me to Mr. Shippee. He asked me if I would make a number of copies of a brochure which I agreed to do, but I explained that I couldn't do it on that day because it was so late in the day.

So we agreed to make them and deliver them back

Monday, the following Monday.

Q What day was the reproduction to be done on?

A The reproduction would be done June 22, o963.

Q What day was that?

A Saturday.

Q How many copies were made?

A I don't recall other than I know it was not more than 24.

Q What type of copying process did you use?

A We had a Xerox.

Q Do you have any other type of copier in your office?

A No, sir.

Q To the best of your recollection what was done with the copies and the original?

A On the following Monday the copies were on my desk and, to the best of my recollection, went sent them by messenger to an office address which was given me by Mr. Shippee.

Q As far as you know were any of those copies retained in your office?

A No, sir.

Q Mr. Holland, I hand you what has been marked as Plaintiff's Exhibit 114 and ask you if that document was

left with you for copying?

A No, sir, I didn't copy this document.

Q Did your office under your instructions do any retyping of the document which was left with you?

A No, sir, no typing.

Q Did you have facilities for retyping such a document?

A We had several secretaries and stenographers available but that could have been done. However, we didn't have time to do such a thing.

Q Mr. Holland, I hand you what has been marked as Plaintiff's Exhibit 215 and ask you if the contents of that brochure were documents wich were copied by your office?

A These Xerox pages could have been copies made by my office. As a matter of dividers we only put black sheets in for dividers.

Q Are there some pages which are not Xerox copies=

A Yes, sir, we didn't copy those.

Q Are there some pages on different type of paper?

A Yes, sir, didn't copy those. This is not a copy that we made.

Q You did not copy the entire --

A No, sir, not the entire.

Q The date on which this copying was done was what, sir?

A June 22, 1963.

MR. JEMISON: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. MARKS:

Q Mr. Holland, I show you what has been received in evidence as Plaintiff's Exhibit 219 and ask you if that is the document you copied?

A Portions of it could well be. Not entirely.

Q You have no question, do you, that the document that you copied was a brochure?

A Yes, sir, it was a brochure.

Q Prepared in connection with a Puerto Rican petrochemical project?

A Yes, sir.

Q Prepared by Prudential Oil Company?

A I don't know.

Q Or Mr. Shippee?

A I don't know who prepared it.

Q Mr. Shippee gave it to you?

A Mr. Fischbeck handed it to me.

Q In Mr. Shippee's presence?

A Yes, sir.

Q You reproduced 24 copies?

A No more than 24. I am vague on the exact number.

Q You have no doubt that you reproduced it?

A Yes, sir.

Q Did you retain any copies?

A No, sir.

Q How do you explain the fact that this document was in Phillips' files?

A I have no knowledge why it would be there.

Q Do you have any explanation why this document, which is a copy of Prudential's brochure, wasn't produced in this case or disclosed as being in Phillips' file until May 1973?

MR. JEMISON: Objection.

THE COURT: I will sustain the objection.

Q Did you review Phillips" files about this litigation to see if you had any materials that bore on this litigation?

A Yes, sir.

Q Did you turn over this document?

A Not to my knowledge.

Q Where did this document come from, sir?

A I have no knowledge.

Q When you reviewed Phillips' files did you see any copy of Prudential's brochures?

A No, sir. I didn't review all of Phillips' files.

Q You didn't put this document in Phillips' files?

A No, sir.

Q Did you understand starting in August 1963 that Phillips was working on a brochure for the Puerto Rico petrochemical complex?

A I probably did. I don't recall specifically.

Q That was just two months after you had reproduced Mr. Shippee's 24 copies on the same project?

A Phillips worked in several locations. I wouldn't be aware of anything specifically in the headquarters office.

Q You knew, didn't you, that Phillips was working on a brochure?

A I knew.

MR. JEMISON: If counsel wants to show the witness the brochure --

THE COURT: Overruled. He is just asking about any brochure having to do with Puerto Rico.

Q You knew Phillips was working on a brochure for

ghe same project that you just reproduced 24 copies of for Mr. Shippee?

A I don't know that it was 24 but I did reproduce some copies, yes. And I did know they were working on a brochure but not in any specific time frame that you give me.

Q You knew Phillips was working on a brochure on a Puerto Rico petrochemical project?

A Some time or other I certainly did.

Q Do you know they started working on this in August of 1963?

A I couldn't say in August.

Q Well, you know Mr. Roy Waldby, do you not?

A Yes, sir.

Q He was put in charge of the Phillips Puerto Rico venture?

A Yes, sir.

Q In August 1963 or thereabouts?

A I don't know it was August but he was put in charge.

Q And Mr. Fischbeck has testified that he had a conversation --

THE COURT: Never mind what Mr. Fischbeck testified, just cross-examine this witness.

Q Didn't you in fact work directly under Mr. Waldby?

A Not at that time, no, sir.

Q Didn't Mr. Waldby give you instructions?

A No, sir.

Q You worked as office manager?

A Yes, sir.

Q You were in charge of people who worked in the office?

THE WITNESS: Administrative assistant which means assistant to the manager of the division.

Q You say you didn't receive instructions from Mr. Waldby with regard to any brochure?

A No, sir.

MR. MARKS: At this time I would offer Defendant's Exhibit 159 which is a memo to T. R. Holland from R. M. Waldby dated November 26, 1963, a defendant's exhibit.

MR. JEMISON: No objection.

THE COURT: It is received.

(Defendant's Exhibit 159 for identification was received in evidence.)

Q Directing your attention to the last paragraph on the second page of this -- first of all, did you receive a copy of Mr. Waldby's memorandum giving you instructions with regard to this project?

MR. JEMISON: Your Honor, I will object to the characterization of the document.

THE COURT: It is in evidence already and it is addressed to Mr. Holland, so the Court will assume he received it.

Anyone who says he didn't receive it will have to show evidence to that effect.

So I will sustain the objection to the question, not that there is anything wrong with the question. It is just a waste of time.

Now, let's get on with this case. Ask him a question.

Q Didn't Mr. Waldby give you instructions with regard to materials needed for the project brochure for the Puerto Rican project?

A No, sir.

Q Doesn't this document indicate to you that you were supposed to check up on Mr. Page sending crude oil samples with regard to the project prochure?

A Your Honor, I would like to read the first

paragraph. It says, "Since I will be out of New York . . . and since Fred Jackson is gone, you should know the following."

That's the way I consider this. This is information you should know.

Q Isn't it a fact, Mr. Holland, that you, yourself, dealt with Omega Management in connection with payments to them on this project?

A Yes, sir.

MR. MARKS: I have nothing further, your Honor.

THE COURT: Anything else for this witness?

MR. JEMISON: No further questions, your Honor.

THE COURT: All right.

(Witness excused.)

MR. MacCRATE: Your Honor, our next witness is not in the building.

THE COURT: Would you approach the bench, both counsel, please.

(Discussion off the record at the side bar.)

(Open court.)

THE COURT: Members of the jury, we will break for lunch until 2.15.

(Jury left the courtroom.)

MR. MARKS: Your Honor, our investigation has

disclosed that Mr. Oscar Chapman, who we were formerly told was too ill to testify, is, in fact, practicing law in Washington and coming to his office on a regular basis with a regular schedule of appointments.

Under those circumstance,s particularly in light of the fact that one of the witnesses listed on Mr. MacCrate's witness list is Mr. Friedman, Mr. Chapman's law partner, we would ask that Mr. Chapman be produced for testimony at this trial.

THE COURT: As I understand it, Washington, D.C. is a hundred miles away, and I don't know how I could accomplish that purpose.

MR. MARKS: There is no question that he is subject to the control of Phillips, your Honor. He was their counsel. He has been receiving payments for ten years, and Mr. Friedman, his partner, is going to testify.

MR. MacCRATE: Your Honor, that is an entirely improper statement. Mr. Friedman is not Mr. Chapman's partner today. Mr. Chapman, so far as I know, has no continuing representation of Phillips.

THE COURT: Do I understand correctly that Mr. Chapman submitted to written interrogatories but refused to be deposed on grounds of health?

MR. MacCRATE: Yes, your Honor. He had open

heart surgery and has been to Dr. DeBakey on several occasions, as I understand, and it was at that time that, by arrangement between counsel on both sides, advised as we were of Mr. Chapman's unavailability, that we worked out very extensive interrogatories and cross-interrogatories which were then propounded to Mr. Chapman.

THE COURT: You see, it is unfortunate for someon to say that his health doesn't permit him to be deposed and then to be engaged in the practice of law.

I have a criminal defendant who is too ill to stand trial in a totally unrelated case and I find he is practicing law also.

MR. MacCRATE: I have no knowledge, your Honor, of what Mr. Chapman is doing by way of practice today.

THE COURT: I take it that counsel has just stated on the record, and I assume from some reliable basis, that he is actively engaged in the practice of law in Washington, and any person who can do that ought to be available for deposition.

How important is it, really?

MR. MARKS: I think Mr. Chapman's testimony is critically important.

MR. JEMISON: Your Honor, I am advised that Mr. Chapman is not engaged in the active practice of law,

that he is in semi-retirement, that he occasionally come to the office where he, much to the distress of the active members, engages in long distance telephone conversations. That is the extent of Mr. Chapman's active practice at this time. I am so advised.

MR. MARKS: Our information is that Mr. Chapman had a full schedule of appointments last week.

MR. MacCRATE: Your Honor, the details as to Mr. Chapman's health --

THE COURT: It is his 1976 health that counts, doesn't it --

MR. MacCRATE: -- are set forth at pages 4 and 5 of the transcript, answers to interrogatories.

THE COURT: It is his present health that counts. My suggestion to you is that you attempt, each of you, to resolve this in a professional manner. If you want to have a conference, telephone conversation with Mr. Chapman and find out exactly what he is doing, and if you want to send down there -- if it is established to my satisfaction that his health permits him to engage in the active practice of law and not just coming to his old firm to make personal phone calls where it is cheaper, I will direct that his deposition be taken in Wasbington and I will, if necessary, recess the trial.

On the other hand, I urge all of you not to make a big issue out of it if it is unimportant.

MR. MacCRATE: Your Honor, I would respectfully submit that he has been subjected to extensive questioning and cross-questioning.

THE COURT: On a misapprehension, however, that his health wouldn't permit him to testify, and I am now told, and of course, I have no basis to resolve this issue, that plaintiff's counsel say he is practicing and had a full schedule of appointments last week.

Mr. Jemison tells me he is not practicing; he has his name on the door, comes in and uses the phone.

That is a threshold question.

MR. MARKS: We know he amended his testimony in this case in December of this year and changed it about a very important meeting.

THE COURT: How old is the man?

MR. MARKS: That I don't know, your Honor.

MR. JEMISON: Born 18 something -- 1880 something, I believe.

MR. MacCRATE: I do not find at the outset of the interrogatories reference to hsi age.

THE COURT: It must be in Martindale's.

MR. JEMISON: 1896.

THE COURT: That means he is approximately 80 years old.

MR. JEMISON: Your Honor, I think there was no question about his incapacity at the time these written interrogagories were submitted and I know of nothing that has occurred since that time would qualify that witness or would put him in condition or position to testify.

THE COURT: Well, if Mr. Marks is correctly advised that he had a full schedule of appointments in his office and is engaged in the active practice of law, which many people in their 80 and 90's are, then he should be deposed.

The question is when did you find out about this?

MR. MARKS: Last week, your Honor.

THE COURT: Even last week I should have been informed. This trial is dragging. You are going to lose the patience and interest of the jury.

I would like to have a precise factual showing of exactly what he is doing and also a showing of some necessity for having him here, and if there is, then I will entertain any application you wish to make.

I see no basis to direct his presence in New York because so far as his retainer with Phillips is con-

cerned, that is something he is owed for past services, as I understand it. He is in a position where he can insist on behing paid and reject any requests on Phillips' part. He is not an employee or officer or director of a party, certainly.

MR. MARKS: I think he is certainly subject to their influence if not their control, your Honor.

THE COURT: Well, it has to be control, not influence, and I don't see any control.

MR. MacCRATE: There was no application, your Honor, at any time since 1972.

THE COURT: I know it, and Mr. Marks admits he knew of this for a whole week. You see, if I dealt with it last week, if I had known of it last week, perhaps you could have deposed him on Saturday and it wouldn't have taken any time of this jury.

I can't make him come up here. I don't see any basis to make him come up here. I think you ought to discuss it further with each other and see if you can't work something out. Perhaps if there is some essential element it could be covered by stipulation or some other fashion. The interrogatories are somewhat extensive and I really don't expect that, regardless of his age or health, he is going to come up here and admit to any wrong-

doing on the stand. That would be my assumption.

MR. MARKS: There is a big difference, your Honor, as you know, between the written interrogatories and oral deposition.

THE COURT: Oh, I know. I know.

Off the record for a minute.

(Discussion off the record.)

(Luncheon recess.)

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AFTERNOON SESSION

(2.15 p.m.)

(Jury present.)

MR. MacCRATE: Mr. Stanley Learned, please.

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S T A N L E Y L E A R N E D , called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MacCRATE:

Q Mr. Learned, what is your present occupation?

A Consultant.

Q When were you born?

A 1902.

Q Please state briefly your educational background, where and when and take us right down as quickly as you can?

A Born and raised in Lawrence, Kansas, went to public school in Lawrence, Kansas and naturally went to the University of Kansas which was located in Lawrence, Kansas and graduated with a degree in civil engineering, Bachelor of Science, civil engineering, 1924.

Q Did you take any further education?

A Well, I wrote what was called a thesis in 1936 which got me an additional degree called civil engineer.

Q Do you have any employment relation to Phillips today?

A Only in connection with this and here at this case.

Q Do you receive compensation for the time you devote?

A Yes, I do.

Q On what basis?

A On a per diem basis.

Q Is that on a basis comparable to that which you received for other consulting services?

A Yes, it is.

Q When did you join Phillips Petroleum Company?

A As soon as I got out of the University of Kansas, in June 1924.

Q Can you give us a quick thumbnail of what you did from 1924 until 1967 with Phillips?

A The first 16 years I was with Phillips in the engineering department and the following year I spent one year in what is called the gasoline pipeline department.

The following two years right after the start of World War II I was in charge of the construction of a butadiene plant which was the basic raw material for synthetic rubber.

January of 1944 I became vice-chairman of the operating committee of Phillips Petroleum Company. July of that year I became chairman.

In 1949 I believe it was I was elected director of the company and vice-president and member of the executive committee.

In 1959 I think I got another promotion there I believe because I was vice-president but I may be wrong, maybe in 1953 but in that area.

Then in 1962 I was elected president of Phillips Petroleum.

Q What time in L962 did you become president?

A April 1962 I became president of Phillips and then April of 1964 I became president and chief executive officer.

In 1967, in July, I think July 1, I became vice-chairman of the board and in November 1st 1967 I retired as an employee of the company.

Q Did you continue for a period thereafter to be a member of the board of directors?

A Yes, I was on the board of directors until I resigned in early 1970. I think I wrote my resignation letter in January 1970 and it was accepted by the board in February.

Q Were you a member of the Phillips executive committee in May 1962?

A Yes, sir.

Q It has been stipulated, Mr. Learned, that on May 31, 1962 a memorandum was sent by W. C. Hewitt of Phillips to William C. Wheeler and that memorandum has been marked as J-36. Is a memorandum of May 31, 1962.

Do you recall being at an executive committee meeting when a report was received from Mr. Hewitt with respect to his review of a proposal relating to Puerto Rico?

A Yes, I do.

Q Who were the sponsors of that proposal?

A Bruce Brown as I remember and I believe, I'm not positive whether Oscar Chapman was involved in that. Bruce Brown definitely; he is the one Hewitt referred to in that memorandum.

Q Did the executive committee at that time take any action with respect to the proposal?

A They accepted Mr. Hewitt's recommendation.

Q It has been stipulated that Mr. Hewitt subsequently informed Mr. Brown of that decision that Phillips was not at that time -- just so the record will be clear, the letter to Mr. Brown, J-37 reads:

"We have discussed the proposal at length and have concluded that under our present circumstances we have no interest in pursuing the matter further at this time.

"However, it is quite possible our situation could change in the future and we would propose that we keep in touch as often as individual situations merit."

Following this presentation to the executive committee in May of 1962, when did you next hear anything relating to a Puerto Rican project that you can recall?

A In November of 1962.

Q Can you fix the time?

A Yes, I can fix the time because I was at the American Petroleum Institute Convention in Chicago and I had a phone call from Robert Anderson at that time. I guess November 12 or 13.

Q From whom did you first receive information in this respect at that time?

A Mr. K. S. Adams, chairman of the board of Phillips Petroleum Company advised me he had a call from Mr. Anderson.

Q Was Mr. Adams in Chicago at that time as well?

A Yes. In fact he and I had rooms side by

side so we could talk as we needed to.

Q Did you thereafter speak with Mr. Anderson?

A Yes. I think I may have said he called, Anderson called me. But I think I called him back in answer to Mr. Adams' statement and I talked to him to the best of my memory on the 13th of November.

(Continued on next page.)

Q Would you state for us as best you can recall what you said to Mr. Anderson and what Mr. Anderson said to you at that time?

A Mr. Anderson told me that he was calling because a very good friend of his was in a position that if he could obtain a supply and be assured he could have a supply of crude oil and a market for the products he would make out of the refinery at Puerto Rico, that he would get the clearance for the necessary import permit, and I said, "Well, Mr. Anderson, this is not difficult." I said, "I can tell you right now, that Phillips Petroleum Company would be willing to sell him the crude oil and buy the products."

So Mr. Anderson then said, "Well, Mr. Learned, would you be willing to write a letter?"

And I said yes.

So he gave me an address. As I remember, it was Prudential Oil Corporation, Greenwich, Connecticut. He gave me a box number, I don't remember that, but "Send it to the attention of Mr. Shippee, the president." And I wrote such a letter.

Q During that conversation did Mr. Anderson make any requests that Phillips become a partner of PRudential?

A No.

Q I show you an exhibit in evidence, P-69, and ask

you if that is the letter to which you refer.

A It is. I said he gave me a box number, I know it's a street number here.

Q Did you write at that time any other letter on this subject to Mr. Anderson?

A No. No other letter.

Q Did you receive any written acknowledgement from Prudential or Mr. Shippee at any time in 1962 or 1963 to that letter?

A No, I did not.

Q Did you receive any communication in response to the letter?

A Well, I don't think I did, but it is possible that I did, because in that letter I stated that in addition to being willing to furnish the crude oil and buy the products, in other words, sell the crude oil and buy the products, that Phillips would be glad to counsel with them and assist in the design and construction and operation if they desired, and suggested that they might want to work out a contract.

So somebody must have called me and asked who they were to contact, but I just don't remember who it was or when it was.

Q During 1962 and 1963, did you visit the New York

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office at Phillips from time to time?

A Oh, yes, I was here every time we had a board meeting, unless I was in a foreign country on promoting a project.

Q Are all board meetings held in New York?

A No, not all of them, but that time there were about eight a year that were held in New York; usually the third or fourth week of the month; Monday of the third or fourth week of the month.

Q And those board meetings would be held in the New York office on lower Broadway?

A At that time they were at 80 Broadway, I think.

Q Did you, while present at 80 Broadway , transact other business on the premises from time to time?

A OH, yes.

Q Did you have any practice in that regard?

A Well, I probably should say that quite often Mr. Adams and I would go out to Mr. Anderson's office. Mr. Anderson was on a retainer with Phillips from --

Q I was talking, Mr. Learned, about in the office.

A Oh, I beg your pardon. I misunderstood your question.

Q Did you --

A We had other people in the New York office besides the financial end of the office which handled the board meetings and I would almost invariably go and see the employees that happened to be in town, because I tried to keep up on projects, and at the same time I learned who were the fellows I wanted to promote in the future.

Q Do you recall hearing anything further regarding the Prudential project after your letter of November, 1962 during the winter and pring of 1963?

A No, I do not.

Q There's been reference to a meeting at the Interior Department which you had in March 1963. Did this have anything to do with the Puerto Rican project?

MR. MARKS: I am going to object to the form of the question.

THE COURT: Isn't it agreed that they had such a meeting?

MR. MARKS: No question there was a meeting and Mr. Keeler testified it related to the Puerto Rican project.

THE COURT: This witness may give his version of what it related to.

A The meeting I think you must be referring to is the meeting at which Mr. Hewitt and myself presented in more or less a seminar form a presentation to a large group of the

Department of Interior employees, giving them the background on two subjects:

Mr. Hewitt talked on petrochemicals and I talked on natural gas.

Q Was there any discussion on that occasion, or any other occasion, during March of 1963, that you can recall relating to a Puerto Rican project with the Interior Department?

A Well, I'm not sure that I can recall anything at this point.

Q Can you recall anything?

A Well, the only thing I can recall is something later in the year.

Q Later in the year, and what period of time?

A I think it was about August of 1963.

Q When is the next time you recall having any conversation regarding a Puerto Rican project?

A In August, early August of 1963 I had a phone call from Oscar Chapman from Washington, D.C.

Q Can you tell us what Mr. Chapman said and what you said to him?

A Well, Mr. Chapman said -- and I didn't know Mr. Chapman, so we were calling each other "Mr." at that time -- Mr. Chapman said to me, "Mr. Learned, I'm making this call

because I'm wondering whether Phillips Petroleum Company would be interested in an attempt to get an import quota into Puerto Rico for a project in which you would not move more than -- in which you would move slightly less than fifty percent of it as gasoline into the United States."

Now, I may not be stating his exact words.

And I said to Mr. Chapman, "If you had called me a month or two ago, my answer would have been a quick no." But I said, "Recently we have made discoveries in Algeria of crude oil which may become sizeable enough that we are going to have a problem on the market." And I said, "I have already started our technical people, making a study as to the method of disposal,"and I said, "I had been figuring that Phillips had no markets in Europe to speak of," and I said, "I didn't think we would have any problem at all selling the heavy ends of crude oil" -- in other words, if we were, for instance, makeing an Algerian refinery --

Q What do you refer to as the heavy ends?

A I'm thinking about your distillates, and so-called number 6 fuel oil and distillates. But I said the light ends we would have no market in Europe and my concept, as I told him, was to move it to the United States, but I said, "With your suggestion, I am going to ask our people to give consideration to that."

That was about it. I told him we'd let him know.

Q What action, if any, did you take following that telephone conversation?

A I naturally immediately got the people who were working on this thing, and this involved three or four departments, and I don't recall all the people involved, but the refining department, the transportation department, supply and transportation department, marketing department, and two or three -- and our engineering department, were all involved, and I don't know which one I got ahold of, but I immediately put in the thought that I'd like to have the sutdy that I already had ordered give consideration to the call that I had had from Mr. Chapman to see whether they thought there was any merit in it.

Q During August or early September did you receive any reports that you can recall relating to such a study?

A Well, some time in September I received a copy of the report on that subject, but I can't tell you what it was early in September.

Q I show you a copy of P-217, and ask you if you can identify that document.

A Yes; this is the report that I was talking about. It is a letter dated September 24th and I got a

copy of this report.

Q And the report you refer to is beneath it with the top sheet dated September 20, 1963?

A That's right. And its subject is Algerian crude, Puerto Rican petrochemical complex.

Q By what name was this project known as it was being studied at this time?

A I think they were using a short word, PEA, standing for Puerto Rican-European-Algerian.

MR. MacCRATE: I offer P-217 in evidence.

MR. MARKS: No objection.

THE COURT: Received in evidence.

(Exhibit P-217 was received in evidence.)

Q Following this time in the fall of 1963, do you recall speaking with Oscar Chapman about your project?

A Yes, sir; in November.

Q Can you fix for us the time and place of such discussion?

A In Novmeber 7th, if my memory is correct, Paul Parker, who was vice president of the International Department at Phillips, and myself, met with Mr. Chapman and his partner, Martin Friedman, in Washington.

Q What, as best you can recall, was said by each of you at that meeting? Or if you can't give us the exact

words, the substance.

A I don't think I ought to go through all of the conversation, but if I can just make a short statement, this meeting was for the purpose of determining compensation to Chapman and Friedman, and we worked out an agreement at that point for them and also involving Mr. Coan of Omega Management, I think actually the agreement was with Omega Management.

Q Well, can you recall what was said with respect to Mr. Chapman's compensation?

A Yes. He wanted $25,000 to be paid to him over the next year, which he thought would be long enough to determine whether we were going to get the import quota.

We discussed at that point some kind of what I would refer to as a success payment. In other words, if the import quota was granted, he was entitled to something for -- substantial compensation for a success payment, and we discussed at that time also about Mr. Coan.

But my memory is at that particular meeting we did not reach any understanding on the success phase of it.

Q With respect to the success phase as you call it of the compensation arrangement, was an agreement reached with Mr. Chapman on that?

A Yes. My memory -- I better just say yes.

Q What do you recall as to that agreement?

A Mr. Chapman, according to my memory, called me within the next four or five days at Bartlesville and suggested that he would like to receive $400,000 for Chapman, Friedman, whatever the full name of their legal firm was at that time, and $100,000 for Omega Management and I replied that is perfectly satisfactory.

The contract I think was executed within the next month on that basis.

I ought to probably say one other thing -- maybe it is not proper but --

Q You are reverting to the conversation you had?

A Yes, referring to this conversation involving the contract.

Q Well, this is the one you had on the telephone or the one you had in person?

A No, in person.

Q When you were in Washington on the 7th of November?

A Yes. It just occurred to me that I asked

specifically of Oscar Chapman in that conversation whether we had any obligations to anyone else and that is when Mr. Coan's name came up.

Q What did Mr. Chapman say in response to your question?

A Mr. Chapman said I do have an obligation to Omega Management and he may have used Coan's name. He said he had been working with me and trying to promote this project and he would be very fundamental in working from this point on and he said I feel he should be included.

I asked is there anybody else and he said no.

MR. MARKS: Can we have the date of this conversation?

THE COURT: Yes, will you fix the date?

MR. MacCRATE: The witness already did, it is November 7, your Honor, 1973.

THE WITNESS: In this conversation where we were discussing the contract.

Q Thereafter do you recall any discussion of compensation with Mr. Coan?

A I didn't have direct conversation with Coan but at some subsequent time it came to my attention that Coan was spending considerable time on this project and

I think I instructed our New York office -- I don't know whether I instructed Mr. Conn and I am trying to make a differentiation between the two names, Mr. Conn and Mr. Coan.

Mr. Conn was in charge of our international departrment in New York but I don't know whether I talked to him direct or whether I talked to Roy Waldbe or someone else but I called to their attention the necessity of some kind of payment to Mr. Coan on a monthly basis or time basis similar to what we had arranged with Mr. Chapman.

Q Was a written agreement entered into at that time with Mr. Coan?

A It is my understanding there was such an agreement.

Q There has been marked in evidence as Exhbit J-42, and I ask you if this is the written agreement to which you refer?

A Yes, that is, providing for $2000 a month to Mr. Coan or Omega Management.

Q A retainer of $2000 a month to Omega Management?

A Yes. This was a proposal. In other words, this is the written proposal from Omega Management to Roy Waldbe of Phillips Petroleum but it was accepted by Mr. Waldbe.

MR. MARKS: May we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. MARKS: Your Honor, throughout the discovery in this litigation we have requested the retainer agreement that the witness jusg testified about with Mr. Chapman and Mr. MacCrate hasn't produced it --

THE COURT: I thought it was marked as J-42.

MR. MARKS: That is the agreement with Omega, your Honor, which was produced by the witness and was just testified to. There was a $400,000 payment to Chpamn pursuant to the retainer agreement that we have never seen. I think that ought to be produced.

THE COURT: Certainly it isn't privileged once he elicits testimony from the witness about it.

MR. MacCRATE: I took the position, your Honor, from the outset that communications between Mr. Chapman and Phillips after the time he was retained as counsel were privileged. There was no challenge to this.

THE COURT: Haven't you waived the privilege once you ask him whether he was paid and how much he was paid?

MR. MacCRATE: I don't believe that goes to the exchange of information between attorney and client, your

Honor.

THE COURT: Certainly the retainer agreement would not be privileged. You have elicited it and are relying on it.

Is there a written retainer agreement?

MR. MacCRATE: Subsequent, this agreement was in due course amended.

MR. MARKS: We would like those produced.

THE COURT: Don't you believe once you elicit testimony with respect to the agreement, the document pursuant to which it was made becomes available?

MR. MacCRATE: I don't believe, your Honor, that any communication between an attorney and client is subject to production. I believe the objective fact of what --

THE COURT: You say confidential communication is privileged. Once you disclose the fact of the payment the document relating to the payment is no longer confidential. Since you brought it out, unless there is something in the agreement which is of a confidential nature, I would direct its production, the paper pursuant to which the money was paid that this witness just testified to.

MR. MacCRATE: The particular paper on November 1963 was discarded when a new arrangement was made with

Mr. Chapman and that would describe any agreed payments over time.

THE COURT: You say discarded. You mean it doesn't exist?

MR. MacCRATE: I don't believe it does.

THE COURT: If it doesn't exist I can't direct it.

Why would you tell your adversay that something was privileged if it doesn't exist?

MR. MARKS: We have seen drafts but not the --

THE COURT: Let the witness testify on cross-examination that there is a signed agreement of that sort and it was discarded and see what the jury thinks about that.

MR. MacCRATE: Your Honor, there are several documents here, it isn't just one.

THE COURT: I believe the privilege is waived as to the retainer agreement itself. If you want me to examine it in camera to find out if there is something confidential in it, I will preserve any confidence not waived. If it really doesn't exist, just let some witness testify to the Court and jury as to that because I think it is almost incredible.

MR. MacCRATE: We will produce what we have here

for your Honor's examination.

THE COURT: If there is nothing confidential I am going to give it to him because you opened the door by stating that you retained Chapman and how much you agreed to pay him and a copy of the retainer becomes highly relevant. Chapman did more for this refinery than Prudential did.

(In open court.)

BY MR. MacCRATE:

Q Mr. Learned, referring to November 1963, can you recall any other conversations that you might have had at that time relating to the Puerto Rico project?

A Yes.

Q Would you identify with whom?

A On this -- first before giving us the time, who was it?

A Robert Anderson.

Q Will you fix the time and place?

A It would be here in New York on either the 18th or 19th of November.

Q How do you fix the date as the 18th or 19th of November?

A Well, Phillips had a board meeting in New York on the 18th and that is the only way I can fix it. I think that Mr. Adams and I went out to Mr. Anderson's

office following the board meeting.

Q Before I inquire as to the conversation was anyone else present when you and Mr. Adams spoke to Mr. Anderson?

A I think just the three of us in the room, Mr. Boots Adams and I were in Mr. Anderson's office. He was the only one in there that I know of.

Q Tell us as best you can recall what you said and what Mr. Adams said and what Mr. Anderson said?

A Well, to the best of my memory I said to Mr. Anderson that I remembered about a year previously he had called me in relation to a program that Mr. Shippee was promoting for a refinery in Puerto Rico and that I wanted him to know that we had just completed contracts, Phillips had just completed contracts with Mr. Coan and with Mr. Chapman to develop a possible import quota for Phillips Petroleum Company on a petrochemical project in Puerto Rico and I felt he would want to notify his friends that this was being done.

I think Mr. Anderson, to the best of my memory, he said to me I will let Mr. Wright know who was in the office and I will ask him to tell Mr. Shippee and Mr. Willey.

Q Do you have any further recollection of anything

said at that meeting?

A I think that is basically the conversation. I am sure there was some discussion on things that Mr. Anderson might have been doing with Mr. Adams but I have no memory of the details. This is the only part I was involved in.

Q Turning to the month of December 1963, do you recall traveling during that month?

A Yes, I did. I traveled quite a bit.

Q Could you tell us something of your travels?

THE COURT: Is it relevant to this case?

MR. MacCRATE: It is to fix the witness' presence at particular places at particular times.

THE COURT: Let us address it to those particular places. If he is asked on cross-examination where he was he can tell us about his travels.

Q Were you away from Bartlesville a substantial time, Mr. Learned?

A I was.

Q Do you recall when you returned to Bartlesville around the middle of December?

A Yes. I had been to Europe on business for I guess eight or ten days. I got back to Bartlesville and we were -- I better just say I got back.

Q Can you fix approximately the time of your return to Bartlesville?

A I think it was around the 8th or 10th, maybe the 11th. I don't remember exactly.

Q Following your return to Bartlesville did you have anything to do, you yourself, with the Puerto Rican project?

A Yes, I did.

Q Will you tell us what you did?

A I went over a proposed letter which had been drafted and I made some changes in it and,as I remember the timing, the 16th of December I signed a three-page letter addressed to Mr. Durand, the Director of Economic Development Administration of the Government of Puerto Rico.

There were a bunch of tables, I don't know whether three, four or five or six pages that were atteched to that which had been prepared by the group of scientists working on this project.

This was an effort to get some interest on the part of Puerto Rico in the petrochemical project we were talking about.

Q I show you J-43, which has been marked here in evidence, and ask you if that is the letter with attached tables to which you refer.

A Yes; this clears me up. There were only four pages of attachments.

Q Mr. Learned, do you recall how the letter J-43 was sent to Mr. Durand?

A Yes. Mr. Diaz-Hernandez, who was the director, I guess, of the United States operation, he was normally here in New York City, had been in Bartlesville, working with our scientists, and he hand delivered this letter. He volunteered he'd take it to Puerto Rico and get it into their hands as quickly as possible.

Q Did you receive a response to the letter?

A Yes, a fairly quick response, that they wanted a team of Phillips people to come to Puerto Rico at the earliest opportunity to discuss the implementation and all the problems that went with an import quota.

Q Were arrangements made to go to Puerto Rico?

A They were.

Q By whom, if you recall?

A Well, Mr. Hewitt handled most of the arrangements and, of course, he had the help of various people, and they had to work out a time because they wanted some top officials

of the company, and people who were involved, and we had to get a time that we could get Hewitt and myself at least and preferably also Mr. Parker, who was head of the international department, and Roy Waldby who we had assigned to be the project manager for this particular item, and they worked out a date for early in January for a meeting in Puerto Rico.

Q Between the time, the date of this letter, December 16th, and the end of December, did you remain in Bartlesville?

A No, not all the time. I think I was gone -- well, I know I was gone from just a little bit before Christmas until about New Year's. As a matter of fact, I think I was at my daughter's house in Memphis, and with her family and four children, at that time, from about the 24th of December until the time that we went to Puerto Rico.

Q By what transportation didyou go to Puerto Rico, if you recall?

A Well, this was a combination of transportation.

Phillips had two or three private planes, and they picked up the -- well, I'd better put it this way :

Mr. and Mrs. Paul Parker --

THE COURT: Excuse me. Just a moment.

Can't we stablish that he went to Puerto Rico

and when he arrived there? How he got there, is that relevant?

MR. MacCRATE: Yes, I believe it is, your Honor.

THE COURT: And who went with him? All right, go ahead, you may answer.

A Mr. and Mrs. Parker, Mr. and Mrs. Hewitt , Mr. and Mrs. Waldby left Bartlesville. They picked me and my wife up at Memphis, Tennessee, at the airport there. We went immediately to the Miami airport. Then we were met there by Mr. and Mrs. Friedman, Martin Friedman of the Chapman firm, and the five couples then went by commerical airline from there to Puerto Rico, got there the night of the 2nd, January 2nd.

Q What materials, if any, did your party take to Puerto Rico for those meetings?

A Well, they took a -- oh, I guess I'd call it a brochure, they had a brochure with them, and this was something that I wasn't very well pleased with.

Q Had you seen it prior to that flight?

A No, I had not.

Q Were there other things that were taken for this trip?

A Yes. Mr, Hewitt had brought a bunch of slides

in order to be able to show the various projects that Phillips had done to the various people in Puerto Rico so they'd have some concept of the capabilities of Philliops after we talked to them there.

Q Do you recall if there was a letter accompanying the booklet to which you have referred?

A Yes. Someplace in the booklet, I think it was, oh, five or six pages from the front, was this three page letter, and the tables that I referred to previously.

Q I'm referring to a covering letter. Was there a covering letter that went with the brochure?

A Oh, a very short letter, yes.

Q Well, do you recall when --

A I signed it I think --

Q You signed that?

A I think I signed that on the airplane.

Q This letter, J-44, dated January 2, 1964 --

A Yes.

Q -- it has been stipulated was signed by you.

A That's right.

Q And it is your recollection that it was signed while you were on the plane en route to San Juan?

A I think so, yes.

Q Can you recall any comment made by you about the

booklet, J-45?

MR. MARKS: I object.

THE COURT: Sustained.

Q Following your arrival in San Juan --

MR. MacCRATE: I withdraw that.

Q It has been stipulated, Mr. Learned, that you had meetings with the representatives of EDA and PRIDCO in San Juan, January 2nd and following.

A I don't think we had any before January 3rd. We didn't get over there until the night of the 2nd of January.

Q So that the first meeting, as you correctly point out, would have been the following morning, correct?

A Correct.

Q And I believe that is the stipulated fact.

In paragraph 47 of the stipulation it is provided that on January 3, 1964, Stanley Learned, and it cites the others, attended a meeting with EDA and PRIDCO. I want to direct myself to that meeting on January 3, 1964, Mr. Learned.

Do you recall any comments at any time in the course of that meeting relating to the brochure, J-45?

A yes, I do.

Q Would you tell us what comments you can recall?

A Well, Sam Van Hyning, who was a, I think he was a consultant to PRIDCO, but he was given a copy of that brochure and made some rather derogatory comments about it.

Q Do you recall any other comments than those of Mr. Van Hyning?

A Well, actually, I don't think that the others looked at the brochure at that point.

Q Was there any action that was requested with respect to the brochure by anyone?

MR. MARKS: I will object to this as leading, your Honor.

THE COURT: Well, it is leading, but let's find out what happened and go on with the case. No more leading questions, Mr. MacCrate.

A May I answer?

Q Can you recall anything that was said with respect to the brochure?

A Well, I wasn't defending that brochure, because I didn't like it, as I have already explained to you. We met both with Sanchez, who was head of PRIDCO, and his staff, and then subsequently we met with Mr. Durand in a second meeting along with Mr. Sanchez, and I think one or two of his top people, and I told him that we would prepare another brochure, that would more adequately and fully describe

what we were proposing as outlined in my letter of December 16th and the attachments thereto. That is basically what happened, and we went home -- actually I think it was on the 4th, we were taken by helicopter or airplane around the island.

THE COURT: Please, I don't need all the travel arrangements. Let's go on with what actually happened, and let's not worry about the travel arrangements. Frame another question.

Q Mr. Learned, did you know at that time that the booklet that was delivered to EDA contained in its introduction two sentences copied from an earlier brochure?

A No.

Q When did you first learn of that fact?

A I don't know exactly, but since the time that this lawsuit was filed.

Q Did there come a time after January 1964 when you saw a copy of a new booklet prepared by Phillips?

A In February I think it was; 1964.

Q I show you a copy of J-50 and ask you if that is the booklet to which you refer.

A Yes, it is. It's got the letter you're talking about.

Q In the period prior to May, 1964, when it has

been stipulated that there was a filing made by Mr. Chapman to the Oil IMport Administration, did you have any meetings in Washington relating to this project?

A Yes, I had two meetings in Washington.

Q Can you fix the time and place and who was present?

A Well, in April, I don't remember the exact date in April, but I had a meeting with the Secretary of the Interior, Stewart Udall, and in June I had a meeting along with Mr. Durand, Rafael Durand, head of the EDA, he and I had a meeting with Mr. Kelley, the Assistant Secretary of the Department of Interior.

Q My question had related to the period prior to May 1st. But you are identifying in the first half of 1964 two meetings; one in April, and one in June?

A Yes.

Q Now, with respect to the meeting in April, do you recall who was present?

A Well, to the best of my memory it was just Stewart Udall, but I'm not positive.

Q Was Mr. Chapman or any representative of his firm present?

A Oh, yes, Mr. Chapman and I think possibly both Chapman and Friedman were with me at that meeting. I'm not

positive that Friedman was there.

Q Was the Assistant Secretary of Interior there as well?

A I don't remember. I don't think he was.

Q What was the subject matter of that meeting?

A The purpose that I went to see Stewart Udall about was to let him know, to be sure that he knew that the requests for imports had been filed, and if anything could be done to expedite it, it would be greatly appreciated; that I thought it was to the advantage of everybody involved, I mean particularly EDA and the Puerto Rican people.

Q Following that meeting, were you absent for a period?

A Yes. I think the month of May almost entirely I was out of the country. I was in India in connection with a project there, and in Japan.

Q And you have referred to a meeting in June, and I believe you referred to Assistant Secretary Kelley and to Mr. Durand?

A Yes.

Q Can you recall anyone else who was present at that meeting?

A Well, I feel sure that possibly Cordell Moore might have been there on account of the oil imports angle

of it, but I'm not positive of that.

Q And can you recall what was discussed at that meeting?

A Well, I think the only thing we were doing was talking, probably at that meeting, in connection with the presentation -- I probably ought to go back to the other meeting, because this reminds me that Mr. Udall told us in the April meeting that there was going to have to be a public hearing on this import allocation. And he thought, I guess, he was going to shock me, but I said, "That's fine, I will be very happy to do it; this will allow everybody in the business to make an appearance before us. They can take exception to it if they want to."

So I think the meeting with John Kelley was probably to bring out the importance of the matter to EDA and to Puerto Rico and I think Mr. Durand requested this, and to indicate to him about the time gone and bring out all of those points, because a hearing was held just a month later.

Q When was the hearing held?

A To my memory, it was the 31st of July, 1964.

Q And it's been stipulated for the record here, Mr. Learned, the facts with respect to the hearing, and that you testified there and also all of the presentations are a matter of this record.

Did you participate in the preparations for that meeting, the materials that would be produced at the hearing?

A Yes, I did, and I also appeared as one of the persons at the meeting.

Q Could you identify those who participated in the preparation of materials for this hearing?

A Well, we had a lot of experts that were doing detail work, that type of stuff. I judge there must have been forty or fifty of them working on the matter, to be sure we had it in the best shape we could have it, but there were only basically I think four presentations at that hearing.

Q There was a presentation by Phillips, and was there also a presentation by EDA?

A Mr. Durand was the first speaker I believe at the hearing. For EDA.

Q And in connection with that presentation, Mr. Chapman and his firm represented Phillips. Was EDA represented by counsel?

A Yes, I think they had a law firm in Washington; the name I remember is Fortas, Abe Fortas' name, but it was a young attorney with them that was in all the meetings practically that I attended in Puerto Rico at any time involved on working out the details of this later. I can't think of his name.

Q Are you referring to Mr. Rigby?

A Yes, that's the man.

Q But you have jumped now to meetings later on.

A I appreciate that. I have. But that is what reminded me of what the law firm's name is. I'm sorry.

Q Would the name Arnold, Fortas & Porter refresh your recollection?

A Yes, that's right.

Q Following the hearing at the end of July, were you further engaged with respect to this project?

A I don't remember very much that I did following July until early in the next year, '65.

Q I show you a copy of D-189 for identification and ask if you can identify that letter.

A Yes. This is a letter from Mr. Durand, September 24th, to me.

Q Did you receive such a letter from Mr. Durand at or about the time of its date?

A Yes, I did.

MR. MacCRATE: I offer it in evidence.

MR. MARKS: No objection.

THE COURT: It will be received.

(Defendant's Exhibit 189 was received in evidence.)

Q Mr. Learned, do you recall if you took any action with respect to that letter that you received from Mr. Durand in September of 1964?

A I sent it up to Mr. Waldby, I think.

Q Did you take any additional action that you can recall at this time?

A I might have written a letter to the Department of Interior, but I don't remember.

Q It has been stipulated, Mr. Learned, that in February, 196 5, the Secretary of the Interior announced that he had determined that the establishment of a petrochemical industry on the island, deriving its feedstocks from the Caribbean would not be inconsistent --

A That's the release of February 11th, isn't it?

Q February 11, 1965.

A Yes, I remember that very well.

Q Would not be inconsistent with the objectives of the Oil Import Program. Following that announcement by Secretary Udall, did you do something further with respect to this project?

A Well, I spent a terrific amount of time, between Washington and San Juan, Puerto Rico, for the next, oh, I'd say three to three and a half months, because this wasn't a normal import quota. Phillips Petroleum Company

having to make a lot of commitments to what would be done, increased investments, how much we would reinvest, in other words one commitment I remember very specifically --

Q Well, in what form were these commitments to be?

A They ended up in a formal contract which there is no doubt in the evidence --

Q When was that contract negotiated, Mr. Learned?

A Well, it was negotiated back and forth. I think I made at least eight trips in that three months, either to Washington or to San Juan, working with the Department of the Interior and EDA.

MR. MARKS: May we have a time frame on that period?

THE COURT: I think we are way into 1965 now.

THE WITNESS: '65.

MR. MacCRATE: We are, your Honor.

THE COURT: Yes.

Q Can you identify who were the negotiators for Phillips and who were the negotiators for the other parties?

A Well, Roy Waldby was in charge of the operations with Phillips. But I spent an awful lot of time with it myself personally. EDA, well, I don't know who all might have worked on it on their end, but in my contact, they were

always with Durand, and some of his staff, which I would say would have been Sanchez, who was the head of PRIDCO and Sam Van Hyning. Chapman and Friedman were involved from the legal standpoint.

I think in every case I made a trip, one or the other or both of them were there, and I think Rigby was in most of those meetings also.

Q On behalf of EDA?

A Well, yes.

Q Was there at the same time negotiation of these terms with the Interior Department?

A Yes. If one got more than the other side the other wanted a little more.

Q With whom of the Interior Department did this negotiation proceed?

A They were basically with the staff of the oil import group which would be Cordell Moore and I don't remember all involved.

Q Mr. Learned, it has been stipulated that you wrote a letter to Mr. Kelley, the Assistant Secretary of the Department of Interior on March 8, 1965 which has been marked J-62.

MR. MacCRATE: I would like to read this letter to the jury at this time, your Honor.

(Exhibit read.)

Q Mr. Learned, I show you two exhibits that have been marked in evidence at this trial, J-60 which is a copy of a letter from Mr. Durand to Mr. Udall of March 8, 1965 and J-61,which is a copy of a memorandum of March 8, 1965 from Rafael Durand to the record.

Did you see copies of those two documents at about the time they were prepared?

A I don't remember seeing them at that time.

Q Do you have a recollection of when you first saw J-60 and J-61?

A I think I saw them since this lawsuit was filed.

Q Mr. Learned, it has been further stipulated that on May 27, 1965 an agreement was executed between Phillips and Puerto Rican Government in San Juan and that agreement has been marked as J-70.

Following the execution of that agreement were there other correspondence that you had with the Puerto Rican officials that you can recall?

A I don't recall a lot of it at that point.

Q I show you J-72, a letter dated June 11, 1965 addressed to Stewart Udall and ask you if you recall sending that letter at or about its date?

A Yes, I do.

MR. MacCRATE: Your Honor, I believe in the interest of expedition I will omit reading that.

THE COURT: Is this a convenient point ot take a recess?

MR. MacCRATE: Yes, your Honor.

THE COURT: Members of the jury, you may withdraw to the jury room. We will have a ten-minute recess.

(Recess.)

THE COURT: You may resume, Mr. MacCrate.

BY MR. MacCRATE:

Q Mr. Learned, I am now going to refer to January of 1965.

Do you recall a visit that month at Bartlesville by Mr. Shippee, Mr. Wright and Mr. Willey?

A I do.

Q Did they have a conversation with you that day?

A Yes, we had a good visit.

Q Would you tell us as best you can recall what they said and what you said?

A I think to start off with I had known Mr. Wright some time and he was more or less the first spokesman. He introduced me to the other two gentlemen.

Then Mr. Shippee presented me with a paper, I think it was two sheets but it may have been one, of a proposed satellite for the petrochemical complex. It was a project for the manufacture as I believe of PVC, poly vinyl chloride. He handed it to me and I looked at it.

I said this would be a very interesting satellite but I said it has a back-to-back arrangement in it. Really basically you are presenting me a financial scheme.

I think you should go back and get a market for your polyvinyl chloride and present the project.

Q Do you recall anything further that was said at that meeting?

A Well, I think that Mr. Shippee indicated that he would be glad to do so. I don't know just what the words were.

Q Did you take any action following that meeting that you can recall?

A I am sure I wrote Waldbe a letter mentioning that conversation and probably sent him -- I am not sure whether he left me a copy of that proposal or not. I don't think they did.

Q I show you Plaintiff's Exhibit 162 and ask you if you can identify that document?

A Yes, I can. This is a letter I wrote and I sent him some information. I said that is the letter that Shippee gave me, some papers on his program so I attached those also. I forgot about that.

Q Did you send this memorandum on or about January 11, 1965 to Mr. Waldbe?

A I am satisfied it went out the day it is marked there.

MR. MacCRATE: I offer Plaintiff's Exhibit 162

in evidence.

MR. MARKS: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 162 for identification was received in evidence.)

Q Was there any mention in your conversation with Messrs. Shippee, Wright and Willey that Phillips had stolen any concept or idea of theirs in respect of a Puerto Rican project?

A No.

MR. MARKS: I object to the form.

THE COURT: I will overrule the objection.

Q Did Mr. Shippee ever assert any such claim in any conversation with you?

A No.

Q Did Mr. Willey?

A Well, I would have to say no. He didn't say a word in that conversation, in this meeting we talked about.

Q Did Mr. Wright?

A No.

Q Mr. Learned, it has been stipulated that the oil import allocation was finally granted to Phillips in December 1965, that the Phillips Puerto Rican Core was

organized in January 1966.

Did the plant go on stream before or after your retirement?

A It was just after my retirement.

Q You retired in what month?

A Nogember of 19667 and I think that the plant -- the plant was basically finished when we had the dedication ceremony but it wasn't actually in what I call production operation. The other affair was in January 1968. It could have been in February.

Q It went on stream in January or February 1968?

A Yes.

MR. MacCRATE: I have no further questions of Mr. Learned.

CROSS EXAMINATION

BY MR. MARKS:

Q Mr. Learned you live in Bartlesville, do you?

A My residence is in Bartlesville. I spend about half a year there.

Q You are now a consultant?

A No, I am in Bartlesville. My home is in Bartlesville. The other six months I spend in Florida. My wife has arthritis and we go there.

Q You are employed as a consultant?

A As a consultant, yes.

Q For Phillips on occasion?

A I had been consultant to Phillips on I guess two lawsuits where I was involved about the same period of time as I am on this one.

THE COURT: A total of three lawsuits?

THE WITNESS: No, one other. I beg your pardon.

Q What is your consulting arrangement, what kind of fees do you get?

A A per diem fee.

Q What amount?

A $1000 a day.

Q A thousand dollars?

A Yes.

Q You are a substantial stockholder of Phillips, are you?

A Well that depends.

Q How much stock do you own, you and your wife?

A I own I would say 25 or 26,000.

Q What is the selling price approximately?

A Selling for 57, I think it closed last Friday.

Q In addition to your ownership of 25 or 26,000 shares selling at that price, don't you also receive annual compensation from Phillips?

A No, I do not.

Q Pursuant to your retirement arrangement?

A No, I do not. I get retirement income for which I contributed substantially which depends upon my length of service but has nothing to do with services rendered now or in the past.

Q But Phillips pays that, do they not?

A No, they do not. That is paid by Metropolitan Life Insurance Company.

Q What was your position in 1962 at Phillips?

A Well, I had two different jobs because I became president in April and I was as I remember executive vice-president and subsequent president but I may have had different titles.

(Continued on next page.)

Q What was your compensation as president?

A Well, it's varied.

Q The highest.

A I don't remember exactly, but it was somewhere around $300,000 I think, last.

Q A year?

A Yes.

Q In addition to that, you got stock options, options to purchase stock in the company?

A No, that's how I got the stock that I have now, from options that were issued many years ago.

Q I direct your attention to 1963. Isn't it a fact that Phillips had assets of about 1.7 million dollars?

A I don't remember those figures.

Q Gross income of about 1.3 million dollars?

MR. MacCRATE: Your Honor, I don't know, all these matters are of public record.

THE COURT: Are you stating an objection?

MR. MacCRATE: Yes.

THE COURT: Objection sustained.

Q How many employees did Phillips have at that time?

THE COURT: You know, the only purpose of this line of questining is to help him earn another $1,000

tomorrow. Let's get right down to this case. They had lots of employees in 1962.

MR. MARKS: There's been some talk, your Honor, about the size and scope of the companies involved,

THE COURT: No problem about the size and scope. As far as these jurors are concerned, both the companies are equal, equally entitled to justice in this court. Let's try this case.

Q Did you have anything to do, yourself, Mr. Learned, with the efforts of Mr. Brown in connection with Puerto Rico?

A Are you referring to Bruce Brown?

Q Yes.

A I had nothing to do with his operation.

Q You didn't review that presentation or have anything to do with that, did you, with Mr. Brown?

A I testified that I saw the letter that Mr. Hewitt wrote.

Q You were aware of the fact that Phillips turned down Brown and said they weren't interested?

A Yes.

Q You had not participated in that decision, had you?

A I was a member of the executive committee that

passed on that matter.

Q You have a recollection of passing on it?

A I already testified that I did.

Q After Mr. Brown was told that Phillips was not interested in the project in Puerto Rico, do you recall when that was that he was told that?

A You mean the time?

Q Yes.

A It was in May of 1962.

Q Was anything done by Philips in connection with Puerto Rico from the time of May 1962 until your conversation with Mr. Anderson in November of that year?

A Not that I know of.

Q What was Mr. Anderson's duties in relation to Phillips at that time?

A Mr. Anderson, you're speaking of Mr. Robert Anderson?

Q Yes, former Secretary of the Treasury.

A He was former Secretary of the Treasury. He was a consultant to PHillips.

Q Did you know what his duties were?

A No, I don't

Q Do you know whether his duties related to finding new projects for Phillips to be interested in?

A I feel sure that he and Mr. Adams had discussed what Mr. Adams expected him to do. That might easily have been one of the programs.

Q But the arrangement between them, was between Mr. Adams and Mr. Anderson, was it?

A Yes.

Q And you are not privy to the contents of their discussions concerning his duties, is that fair to say?

A I don't believe that I was ever told that he had certain specific assignments.

Q Weren't his duties pretty much what Mr. Anderson asked him to do?

THE COURT: Mr. Adams you mean?

Q Wasn't Mr. Anderson's duties pretty much what Mr. Adams asked Mr. Anderson to do?

A I wouldn't be surprised that they could have been

Q You were not consulted in any way, were you, concerning Mr. Anderson's retainer with Phillips?

A I think in later years I was. I don't think I was in the first year it was made.

Q I'm talking about the period 1962 and 1963.

A Well, I think that possibly in '63.

Q Do you know what his duties were under his agreement with Phillips?

A I don't think there was any written agreement.

Q Di you know what his duties were?

A I have already stated that I thought they were whatever he and Mr. Adams talked about.

THE COURT: I think counsel is talking about the period of time after Mr. Adams had finished and you had become the chief operating officer.

THE WITNESS: He's talking to me about '63, I thought.

Q Directing your attention to the time you became chief operating officer, do you know what Mr. Anderson's duties were?

A No, because I did not get into that matter.

Q Did Mr. Adams have a high regard for Secretary Anderson?

A I think he had a very high regard for him.

Q Did you share that regard?

A I did at that time.

Q In fact, didn't Mr. Adams at one point offer Mr. Anderson a seat on the board of directors of Phillips ?

A I am not positive of that as I did not participate in it.

Q You had a conversation with Mr. Adams, did you not, sir, about the composition of the board of directors?

A At times.

Q In those conversations, wasn't Mr. Anderson's name mentioned as a candidate for election to the board?

A I do not recall it.

Q You were not generally in contact with Mr. Anderson, were you?

A No, not as a basic contact.

Q Most of his conversations took place with Mr. Adams?

A I think most of them did.

Q With regard to Mr. Adams, was he a very forceful individual that when he made up his mind that Phillips was going to commit to a project that he would see that through?

A Well, I would say he was a very forceful individual, but he had an open mind, if a matter should be changed, that he had his mind in one direction, he could change his mind.

Q With regard to this Puerto Rican project, did you have conversations from time to time with Mr. Adams concerning its progress?

A Some, but not very much.

Q In 1962 and 1963 weren't you discussing with him what you were doing with Mr. Anderson?

A We were once or twice, but I mean --

Q What did you tell him?

A I don't remember exactly. Probably was telling him the status of the way things were. In '62 there was very little to talk to him about.

Q Directing your attention to your conversation with Mr. Anderson in November of 1962, I believe you testified that that took place when you were in Chicago?

A Telephone conversation?

Q Yes.

A Yes, sir.

Q Did Mr. Anderson tell you or did you understand that Prudential Oil Corporation was going to be the sponsor and the management of this new proposed petrochemical complex in Puerto Rico?

A I don't think he used those words.

Q What was your understanding? Didn't you understand that Prudential was going to manage and run this project?

A No. He told me just as I testified before, that friend of his by the name of Shippee --

Q Hadn't you met Mr. Shippee?

A I don't think I had.

Q Hadn't you met him in Mr. Anderson's office perhaps a year before?

A This I'm not sure of, see, but I can't say that I did. But if I did it was merely while we were sitting in the anteroom out there waiting to get to see Mr. Anderson.

Q Mr. Anderson told you about Prudential Oil Corporation being involved, did he not?

A He told me, he specifically told me what he needed but he -- he told me that Mr. Shippee would be able to get his import quota if he could show that he had a source of oil and disposition for the products. He asked for a letter, which I wrote.

Q And the letter, he told you, to address to the Prudential Oil Corporation, is that correct?

A That's correct. I have already testified, I think.

Q And do you understand that your letter was going, that is, Phillips' affiliation, was going to be exhibited in connection with the project?

A I didn't know what was going to happen to the letter.

Q Didn't you understand that the Department of Interior was going to have to issue an oil import quota for this project?

A OH, yes, I knew they'd have to issue an import quota.

A In that connection, didn't you think that they were going to use your letter with the Department of Interior, wasn't that the purpose?

A I have got to say to you that I do not think that.

Q You didn't think that they were going to use this letter that you were writing expressing Phillips' affiliation with this project?

A How they were going to use it, I don't know.

Q He told you they needed the letter in connection with an oil import program?

A They told me they needed to be able to get that in order to get their clearance through EDA.

Q And the Interior Department.

A Well, the other would follow.

Q And what was the connection? Didn't you understand that they needed a substantial oil company involved in this project for the oil import quota to be granted?

A No, I don't think so.

Q You don't believe that Mr. Anderson told you that?

A No, he did not tell me that. I can assure you of that.

Q Didn't Mr. Anderson say in words or substance

that Prudential Oil needs a substantial oil company as a partner in this enterprise?

A He did not.

Q What didyou understand that you were going to do in connection with the counseling and assisting in the erection of this project?

A Exactly what it says.

Q Didn't you understand that you were going to be giving them assistance in putting up this project?

A We were going to give them assistance if they needed it in the design and construction of the project.

Q How about its operations?

A And operation, if they needed it.

Q And you understood that the reason that they wanted Phillips in here was that Phillips was experienced in these matters, did you not?

A I have already testified that what they asked me --

Q I'm asking whether you understood that the reason that Mr. Anderson and Prudential wanted Phillips in the picture was that Phillips was experienced in these areas.

A What I want to make clear to you is that that isn't what Mr. Anderson told me.

Q Mr. Anderson did not indicate to you that

Phillips' experience in these areas would be helpful in seeing to it that this quota was granted?

A No, he didn't say that.

He said that he thought it might be helpful to Prudential in their presentation if they were able to state that they would have the counsel in connection with the building and construction.

Q It wasn't just counseling from anybody, Mr. Learned, was it? It was counseling from a major oil company that had extensive experience in petrochemicals, isn't that right?

A I'd have to say no to your question.

THE COURT: Which part of the question is it that you deny; that Phillips was a major oil company?

THE WITNESS: No, I don't deny it is a major oil company. But I deny that Anderson said this.

Q Did Mr. Anderson indicate to you that this was going to be more than just a refinery, this was going to be a petrochemical complex?

A I don't think that we had that long a discussion about it. I think that all he did was say exactly what I said before, that he wanted a letter that would assure that they had a supply of oil and a sale of the products.

Q Did you understand at that time that this was

just a refinery?

A I didn't ask him what it was.

Q You didn't know that it was a petrochemical complex at that time, is that your testimony?

A I didn't know what Prudential Oil had done.

Q You were not aware of the fact that this was going to be a petrochemical complex, is that correct?

A I didn't hear you?

Q I said, when did you first become aware that this was going to be a petrochemical complex?

A Well, you mean, that it was planned to be a petrochemical complex?

Q Yes.

A I guess since this lawsuit is filed, I have seen some of these papers. I never even had a reply from Mr. Shippee to that letter.

Q Some time subsequent to this lawsuit being filed, is it your testimony you first became aware that this was to become a petrochemical complex in Puerto Rico by the Prudential people?

A I don't want to make that kind of a statement because I am not positive of that.

Q Isn't it a fact, from the very first conversation that you had with Mr. Anderson, and in your own letter that

you wrote on November 13, 1962, you mentioned yourself this was going to be a petrochemical complex in Puerto Rico, isn't that right?

A All I can tell you is that I was asked by Mr. Anderson would I write the letter and I wrote the letter, and I tried to put in it what Mr. Anderson had asked me to put in it.

Q You were going to assist Prudential in connection with this project in whatever manner they asked you to do, was that your understanding?

A I didn't get your question.

Q I said, was it your understanding that you were going to assist, that is, Phillips was going to assist Prudential in this project in whatever manner they asked you to assist, that you had a common objective here?

A No, no.

Q You didn't understand that you were going to help them achieve this objective?

A No. This speaks for itself.

Q It was not your understanding, sir, that Phillips was going to help Prudential in whatever manner it could to obtain its objective, that is, get an import quota?

A LEt me have that letter a moment.

MR. MARKS: I think I can have an answer to the question.

THE COURT: The witness is intending to tell you that whatever he intended was limited by the terms of the letter.

THE WITNESS: The last paragraph in the letter says, "Whever you desire, we shall be glad to have our representatives work with you to negotiate and complete contracts."

And to the best of my knowledge, there has never been a request to complete that kind of a contract.

Q Item 3 of the letter says, does it not, sir, you are offering to counsel with you and assist in the design and construction and operation of the proposed facility?

A Yes, but this follows the completion of Items 1 and 2 which was the purchase of the material and sale.

Q Do you mean to say if you didn't complete that purchase and sale of the crude oil and other products you felt you had no obligation to give them any counseling whatever?

A That was the intent of the letter and the intent I think of what Mr. Anderson wanted me to put in the letter.

Q You never intended to counsel with them and assist in the petrochemical complex, is that what you are saying?

A I am saying to you that we did if we lived up to the letter.

Q Weren't you committing yourself to help them with that facility and to do whatever you could to help them?

A I think you will find that there was an effort made to do that.

Q Weren't you undertaking to do it by this letter.

A You can say it either way. What I am worrying

about is that you are paying no attention to the last two lines of that letter.

Q Well, who dealt with Prudential, Mr. Learned? Who was the designated representative that Phillips sent? It wasn't you. Wasn't it Mr. Fischbeck?

A It was the New York office and I think Fischbeck was involved.

Q Mr. Fischbeck was manager of the International Project Development at the time?

A I don't know just what his title was. Fischbeck was involved, Waldbe was involved, Mr. Conn was involved.

Q Weren't you asked by Mr. Young of Prudential who the designated representative was going to be?

A I don't know.

Q You indicated Mr. Fischbeck would be the man to see?

A I doubt very much whether I would have said that. I told you I didn't remember in earlier testimony, that I didn't remember who called me. It might have been Mr. Young that might have called me, I don't know. But I think I would have told him to get in touch with Mr. Conn in the New York office.

Q But at the time Mr. Anderson spoke to you didn't

you have some discussion about what a valuable money making project this might be?

A No, there were no comments at all.

Q Did you understand at the time you spoke to Mr. Anderson if you could get or anyone could get a 50,000-barrel a day oil import quota this owuld be a very valuable item for someone to have?

A That was not discussed at all.

Q Did you know it?

A There is a question of how much we were going to get for selling, selling and buying the gasoline.

Q I asked you whether you knew whether having an oil import quota would have been a valuable asset at the time?

A That is a very questionable question because of the timing. As of 1962 oil import quotas had a value.

Q Wasn't that value approximately between $1 and $1.50 a barrel a day?

A Well, I would say it might have been 90 cents but the point I am trying to get to you, you had no assurance how long they were going to last and no assurance hwo long you were going to have the sale. You had no contracts for the sale. I mean, for me to say this was

something of value doesn't mean anything.

Q In fact, Mr. Learned, there was a market for oil import quotas in 1962 and 1963? These were actively traded in the oil industry?

A I don't know what the value was.

Q Isn't that right, they were actively traded?

A Sure they were.

Q If one company had an oil import quota and the other company had oil, they could make a deal together or share financially in the benefits of that transaction, the one who had the quota would make an arrangement with the company that had the oil and together they could get their oil into the United States and make some money, isn't that what had been happening in the oil industry?

A I wasn't sure you could make any money because the market prices weren't very high.

Q But if you could get in foreign petroleum through the import quota you were guaranteed making money on the differential at least, weren't you?

A If you got the cheaper oil, if you had the quota you could bring it in.

Q At the time didn't Phillips have cheaper oil in Venezuela, lots of it that they couldn't get in?

A No.

Q Didn't you discuss with Mr. Anderson the fact that you had some excess capacity that you would like to get into the United States and this quota might help?

A No, I don't think so.

Q You don't believe so?

A I don't think that ever came up.

Q Didn't Phillips have crude in Venezuela in 1962?

A We had a small amount, relatively small amount. I don't know the exact figure.

Q Where were you going to get the 30,000 to 60,000 barrels a day?

A Go out and in the open market and buy it.

Q You didn't have it?

A No.

Q Why were you interested In this if you didn't have the oil?

A I was interested in trying to do a favor for Mr. Anderson.

Q Didn't you think Phillips was going to come out of this with a profit?

A If the negotiations had been made for those contracts I am sure that we would have had a small profit in it.

Q Weren't you interested in making money? This

wasn't a charitable endeavor on your part, was it?

A Well, no, I don't think I would call it a charitable endeavor. It speaks for itself. I expected to get the contracts worked out.

Q You expected to make a profit from the arrangement, didn't you?

A I hoped to make a small profit. I don't think we would have quoted a price that didn't have a small profit in it.

Q Did you know that there were meetings held by Mr. Fischbeck, Mr. Conn, Mr. Page, Mr. Jackson and Mr. Smith of Phillips, all these people met with Prudential?

A I learned that since the trial.

Q Didn't you understand at the time these events occurred during the period November to April 1963?

A I don't happen to remember them.

Q I say were you aware of the fact that for a period of at least four months Phillips representatives were working with Prudential representatives on this project?

A At the time it occurred I was not. I am now.

Q Were you aware of the fact that Mr. Fischbeck was meeting on a regular basis with the Prudential people?

A I just stated to you that he and the other three

you mentioned, that I was not at that time.

Q Were you aware of the fact that Mr. Fischbeck corrected a description of himself as an operating officer in the Prudential brochure for this project?

A Will you restate the question, please?

Q Were you aware of the fact Mr. Fischbeck was listed as an operating officer of the Prudential project in Prudential's brochure?

A I would have to say no. As I understand your question, was I aware?

Q Yes, sir.

A I say no, that is correct.

Q Did you go down to the Department of the Interior in March of 1963?

A March or April, I don't remember exactly.

Q What happened?

A I don't remember. I think I was there in March of 1963 making a presentation on a natural gas facility along with Mr. Hewitt.

Q Did you have friends in the Department of the Interior, people who had been in the oil industry with you?

A No.

Q YOu did not?

A No.

Q Did you ever have occasion to be down at the Department of the Interior to discuss projects informally with them to get their views on whether it was worth proceeding or not before you spent a lot of time and effort on studies and so forth?

A I don't believe so.

Q Didn't you have Washington attorneys that you would work with in that regard?

A You asked did he personally go, not whether or not he sent attorneys to work.

Q Did you ever send attorneys in Washington to work informally consulting with the Department of the Interior for the purpose of exploring their reaction to various Phillips proposed projects?

A We did after we -- for instance in the Puerto Rico project we had Chapman & Friedman do that.

Q Weren't you in contact with Mr. Friedman's office in early in 1963 with regard to the Puerto Rican project?

THE COURT: Talking about him personally or Phillips to his knowledge?

Q Phillips to your knowledge.

A Not to my knowledge, I don't think.

Q How about Mr. Keeler, wasn't Mr. Keller in contact with Mr. Chapman?

A Keeler could have been.

Q March and April?

A Keeler had known Mr. Chapman since World War II.

Q Anything could have happened but I am asking whether you know Mr. Keller knew Chapman and was in touch?

A I don't know what Mr. Chapman or Mr. Keller had done.

Q What is Mr. Keller's position?

A He was in 1962, he was executive vice-president I guess. There was an answer to interrogatories that I have seen but I don't happen --

THE COURT: Is Mr. Keeler alive?

MR. MARKS: Yes.

THE COURT: Let's not bother this witness about Mr. Keeler.

MR. MARKS: I think it is going to beome important.

Q Mr. Keeler then was promoted?

A What?

Q To higher echelons of management?

A Mr. Keeler ultimately became chief executive

officer when I retired in 1967.

Q Directing your attention to the period 1963, particularly in August of 1963 when you testified that you had a conversation with Mr. Chapman, didn't you assign Mr. Keller to run the Puerto Rican project at this point or thereabouts?

A Well, I don't think so.

Q When did you give him -- were you running the project or Mr. Keller?

A I was about to say to you that when we got into the project it was Mr. Waldbe that was running it and the New York office.

Q What was Mr. Keeler's function? Didn't you give him instructions to see that it got done?

A Mr. Keller was one of the top executives that had certain departments that reported directly and normally to him.

At that time the International Department was one of the departments that reported to Mr. Keeler so that the normal approach would be to Mr. Keeler.

But that didn't mean that when I was in Bartlesville and he was gone they wouldn't make an approach to me. It was that way with the other executives, Mr. Hewitt, Mr. Kittrell, people of that type.

Q Were you aware of the fact that Phillips had been requested to do a marketing study in connection with the Puerto Rican project in March of 1963?

A I have to say no because you put the word was I or were I.

Q At the time?

A I say I was not.

Q Do you know whether Phillips said they would do marketing studies or not?

A No, I don't know that now either.

Q I show you what has been received in evidence as Plaintiff's Exhibit 103, a memorandum concerning Prudential Oil Company of April by Mr. Page. I ask you whether you were aware of the fact that Mr. Keeler had had a conversation with Mr. Chapman about the same project you had spoken to Mr. Anderson about, that Mr. Keeler told Mr. Chapman that Phillips wasn't interested until Prudential got an oil import quota?

MR. MacCRATE: Objection, your Honor, to the form of the question.

THE COURT: Would you read that back, please?

(Question read.)

A I was not at the time.

THE COURT: I will overrule the objection?

Q Mr. Keeler didn't consult you about this?

A I don't believe he did.

Q Did you speak to Mr. Anderson about this decision?

A No.

Q Did you speak to --

A I didn't know about it at the time.

Q Wasn't this contrary to your instructions that you were going to counsel and assist Prudential in regard to this venture?

A Let me read it more carefully.

THE COURT: Asking about Plaintiff's Exhibit 103?

MR. MARKS: Yes, your Honor.

A The first paragraph says that he is supposed to refer these people to Mr. Chapman.

Q I didn't ask you that, sir. I asked you whether Mr. Keeler's conversation to Mr. Chapman wasn't contrary to your instructions that Phillips was going to cooperate and counsel and assist Prudential in this venture to get the oil import quota?

A I don't think they were contrary.

Q You didn't even know about this?

A I didn't know it but you asked me for a judgment conclusion and I am giving it to you.

Q Do you know that you had to have a refining history, that is an importing history to get an oil import quota, Mr. Learned? Were you aware?

THE COURT: As of 1963?

MR. MARKS: Yes.

A I do not think that is a correct statement. Let me explain it to you this way.

I think that anyone who went to the Puerto Rican Government and got the endorsement of the EDA and the Governor of Puerto Rico would have been given very careful consideration by the Department of the Interior.

(Continued on next page.)

Q Well, did you know that Prudential had gone to Phillips and told them that they would have to take a more active role in this project and get the quota?

A I do not know that. I did not know that.

Q This was not reported to you?

A I haven't found anything yet that would make me believe that.

Q We have Mr. Fischbeck's testimony on that point.

A Maybe I'd better explain to you what I'm trying to say to you.

Q No, I'll ask you the questions, Mr. Learned.

A Okay.

Q Well, didn't you do any follow-up on this project that --

THE COURT: Would counsel approach the side bar?

(At the side bar.)

THE COURT: What possible difference does it make, Mr. Marks? What possible purpose does this line of cross examination have?

MR. MARKS: Well, I want to show that this witness did not follow up on his own project.

THE COURT: Let's assume he's a very poor president and he didn't tend to his business. I don't think

that gives your clients any rights at all.

Phillips is Phillips, whether it is Fischbeck or Keeler or this gentleman or Page or whoever. I'm not going to waste a lot of time to show that the president was not on top of the details. When Phillips acts through an authorized agents having a parent authority, that is the actions of Phillips, no matter who did it. Let's save time.

(In open court.)

Q Now, did you have any conversations with Mr. Anderson about providing additional marketing information for Prudential in connection with this project?

A I do not remember any conversations with him.

Q I show you what's been received in evidence as Plaintiff's Exhibit 118, copy of a letter from Mr. Shippee to Mr. Anderson, and ask you if that refreshes your recollection as to whether you had any conversations with Mr. Anderson in regard to Phillips providing more marketing information.

A This states, this letter of Mr. Shippee to Mr. Anderson, states that he wanted to have a discussion, and includes in the three points, that he wants to implement the presentation with additional marketing information, which may be obtained from Phillips through your good offices.

So it is apparently asking Mr. Anderson to do

something about it.

Q In connection with Phillips?

A Yes.

Q What I'm asking you sir, is whether that refreshes your recollection as to whether you had a conversation with Mr. Anderson on this point.

A No, I did not have any conversation with Mr. Anderson.

Q Now, you testified that -- when was the last conversation that you had about the Puerto Rican project prior to August of 1963, and your conversation with Mr. Chapman?

A Last conversation with who?

Q Anybody, about the Puerto Rican project.

A Well, does this include people in Phillips?

Q Well, you had a conversation with Mr. Anderson in November of 1962; then as I understand your testimony, there were other people at Phillips who were dealing with Prudential, Mr. Keeler was talking to Mr. Chapman, so forth, and you were not aware of those items, am I correct?

A That's right.

Q Was there any conversation concerning Puerto Rico that you were aware of between your conversation with Mr. Anderson in November, 1962 and your conversation with

Mr. Chapman, August 1963?

A Yes, there was a discussion in the executive committee over Mr. Hewitt's letter in May. I believe it was in May of '63.

Q May of '62, sir. I don't want to get your chronology off. I'm directing your attention from November '62 when you spoke to Mr. Anderson about the project, you gave the letter to Prudential, and then August 1963 you're talking to Mr. Chapman; in between there.

A I don't recall it right now.

Q Did you know that Mr. Chapman had been involved with Mr. Shippee and Mr. Anderson in connection with the Puerto Rican project in your conversations with Mr. Anderson?

A I'd have to say to you no, and I would like to explain it to you, with this additional point:

I specifically asked Mr. Chapman, when we negotiated the contract --

Q No, sir, I don't want to get my chronology off. I'm asking you when you spoke to Mr. Anderson and you wrote to Mr. Shippee, did you know at that time that Mr. Chapman was involved with Mr. Anderson and Mr. Shippee in connection with the Puerto Rican project?

THE COURT: 1962, November.

Q November, 1962.

A I thought you were talking to me about '63.

No, I did not know that.

Q Didn't you know that Mr. Chapman was going to work in Washington to get the oil import quota for Mr. Shippee's group?

A No. At that time, no.

Q You learned that subsequently?

A I understand he did subsequently, but at that time I didn't know it.

Q Do I understand your testimony correctly that in August of 1963 Mr. Chapman called you out of the blue?

A Yes, he did.

Q You had never previously spoken to the man?

A I don't remember any previous conversation.

Q You never previously met the man?

A I don't remember ever meeting him before that.

Q And he called you, just out of the blue, in August 1963 and he said what, "I've got a way to get an import quota for Phillips on this Puerto Rican project"?

A No, he didn't say it that way.

Q He referred to an import quota under the Puerto Rican project, did he not?

A Yes, he said that, as I have testified earlier, that he thought that if Phillips was interested and that

Phillips was willing to limit the exportation of gasoline to something less than fifty percent, that there was a strong possibility that an import quota could be gotten for a project, petrochemical project in Puerto Rico.

Q Didn't you tell him that you had been working with Mr. Anderson and Prudential Oil with regard to an oil import quota for the same project?

A No, because I hadn't been.

Q You hadn't even been told that Prudential had been turned away by Phillips, had you, sir? You just testified to that a minute ago.

THE COURT: I'm not interested in what he was told. Let's stick what what he did and did not do.

Q What you knew, as of August, 1963, so far as you knew, Prudential was still working in connection with the quota, weren't they?

A I don't know. I didn't know whether they were.

Q Did you speak to Mr. Anderson and ask him?

A No. I didn't know what -- why would I have talked to Mr. Anderson?

Q Because it was the same project, wasn't it?

A Well, I hadn't even had an answer back from anybody; at that point, do you realize that I didn't know Nathan Shippee? Do you realize that he had not replied even

to that letter? I wouldn't have any remembrance of writing that letter at that time.

Q Didn't you inquire of your staff what happened to Prudential Oil Corporation and the quota that they were working with them on?

A I wouldn't have made such an inquiry because I didn't know that there was any such thing being done.

Q Well, would it surprise you to learn, sir, that on June 22nd, your New York office copied, made twenty-four copies of Prudential Oil Corporation's brochure for an application for an oil import quota?

A I didn't get what you asked me.

Q Would it surprise you to learn that on June 22nd 1963, your New York office made twenty-four copies of Prudential's brochure application in support of an oil import quota?

A It wouldn't surprise me now.

Q Did anybody at Phillips tell you that Chapman might call you in connection with this oil import quota?

A No, sir.

Q And you did not know at that time that anyone at Phillips had ever spoken to him before about this project, did you?

A Well, that's a hard question to answer, because

I don't know how to limit it to the Bruce Brown matter. Because at some point in tme I learned that Chapman was working with Bruce Brown, along with Coan, I think.

Q You didn't inquire of Mr. Chapman whether this was the same project that you had spoken to Mr. Anderson abo and written to Mr. Shippee about, did you?

A No, I did not.

I did make a very specific question of Mr. Chapman, whether there were any other people, any other commitments besides Mr. Coan.

Q That was much later, wasn't that your testimony?

A No, that was at the time -- well, wait a minute. This was in November of '63.

Q Do you recall discussing this matter with Mr. Keeler in August of 1963?

A No, but I might have. I mean, I don't have any memory of it.

Q Didn't you request that Mr. Keeler be in charge of Phillips' review of this matter to make a report back to you so that you couldmake a determination whether Phillips would proceed?

A Well, that is that report that we were making after Mr. Chapman had called.

Q Didn't you tell Mr. Keller that you wanted him

starting in August of 1963 to be in charge of this matter?

A Well, I probably did. I just don't remember. But I knew that we were having a report made and it would have been logical that Keeler would be the head of it.

Q Now, when you spoke to Mr.Chapman, did he tell you that he would like to meet in Washington with some representatives of Phillips and to discuss the project? How did you leave it with Mr. Chapman after your conversation? Did you say you were interested?

A The first conversation?

Q THe conversation where he called you out of the blue sky, you never met him or spoke to him before in your life.

A Well, I told him that I would not have had any interest, but that I did think we might have and would have someone talk to him.

Q What happened next?

A I'm not sure.

Q Didn't you have Mr. Conn and Mr. Slack go down to Washington to meet with Mr. Chapman on or about August 7, 1963, shortly after --

A I already testified to the fact that I turned it over to the international department, New York. Mr. Conn was the headquarters of it, and Mr. Slack was the Washington

representative of Phillips, so it is quite logical they would, but I don't think I specifically told them to go there.

Q Do you know that Mr. Chapman gave Mr. Conn a brochure at that meeting; are you aware of that?

A Am I aware of it now? I'm not sure whether he gave him a brochure or not at that meeting, but at some point he got a brochure. I'm not that familiar with the case.

Q What brochure did he get?

A You will have to show it to me.

Q Was it Prudential's brochure, sir?

THE COURT: State the number for the record.

Q P-215.

A I don't know. I mean, I'd have to say to you I don't know.

Q Do you know what was done with the brochure that Mr. Conn got from Mr. Chapman?

A No, I do not.

Q Do you know who worked on it?

A The international department in New York probably worked on it.

Q You had nothing to do with the work on that?

A No.

Q That was assigned to Mr. Waldby, I believe.

A I think that's right.

Q Under Mr. Keeler's supervision?

A Under Mr. Conn's -- well, Keeler to Conn to Waldby, yes.

Q Those are the three who were primarily in charge?

A Well, in reporting order, I mean reverse reporting order I'd better say.

Q So you don't know what any of those gentlemen did with the material that they received from Mr. Chapman, do you?

A Are you speaking now?

Q No, at the time, sir.

A No, I did not.

Q Did you know that Mr. Chapman had been having conversations with Mr. Anderson concerning this project in the period -- in the year 1963?

THE COURT: Conversations in '63 or did he know in '63?

Q Did you know in 1963 that Mr. Anderson was having conversations with Mr. Chapman about this Puerto Rican project?

A No, I did not.

Q As far as you knew, once, you only had a conversation with Mr. Anderson about the project and that was in November, 1962?

A Up to that time, yes.

Q And thereafter your next conversation with him was in November, 1963, I believe you testified?

A Yes.

Q Is that correct?

A Yes.

Q Did you discuss with Mr. Keeler his relationship in terms of Mr. Chapman and Mr. Anderson with regard to this Puerto Rican project?

A Mr. Keeler's relationship?

Q With Anderson and Chapman, in seeing this project through.

A I don't recollect that.

Q I show you what's been received in evidence as Plaintiff's Exhibit 127, which is a Telex from Mr. Conn to Mr. Parker, which states, toll W.W.K., that's Mr. Keeler's initials, W.W.K.?

A Yes.

Q And ask you if that refreshes your recollection as to whether Mr. Anderson remained involved in this Puerto Rican project in 1963.

A This doesn't bring any memory back to me.

MR. MARKS: Your Honor, I'd like to read this Telex since --

THE COURT: Hasn't it been read once already?

MR. MARKS: No.

THE COURT: Is there any showing that this witness ever received this Telex or any copy of it? This is from Coan to Parker, or Conn to Parker, rather.

MR. MARKS: And Toll W.K.K.

THE COURT: He's not W.W.K., is he?

MR. MARKS: No, he's not.

THE COURT: Then why don't you find out what he knows about this lawsuit and let him go back to Bartlesville and dont' cross examine him about telegrams which he hasn't seen before the lawsuit started.

Q Did Mr. Keeler ever discuss with you Mr. Anderson's relationship to this project?

A I don't think so.

Q Did you have any knowledge of Mr. Fischbeck being asked to brainstorm and discuss this project with Mr. Keeler in Bartlesville in August of 1963, do you have any knowledge of that?

A No, but this could have been quite easily possible. I mean, I have no knowledge of it.

Q Did you understand from anyone at Phillips that

there was an urgency about Phillips preparing a brochure after August of 1963 for presentation to the Interior Department?

A Let me --

THE COURT: Can't you answer that question yes or no?

THE WITNESS: Well, I'll have to answer it now. I hate to leave it that way. I'm sorry.

THE COURT: If you can't truthfully answer it, then you can give an explanation.

THE WITNESS: The true answer is no, but what I think you're doing is confusing the report that I asked for at thattime for the Puerto Rican-European-Algerian project.

Q Did you understand there was going to be a brochure prepared by Phillips for presentation to the Oil Import Board in connection with the application for a quota for Puerto Rico? I'm talking now for the period from say August to November, 1963.

A Until that report was completed and considered, we did not have a contract with Chapman, we did not have a final decision what we were going to do in August of '63.

Q I'm talking about --

THE COURT: How much longer with this witness?

MR. MARKS: Quite a bit, your Honor.

THE COURT: All right, members of the jury, we will resume 10:30 tomorrow morning. You may withdraw from the courtroom at this time.

(Jury left the courtroom.)

THE COURT: Mr. Learned, perhaps you'd be good enough to step outside the courtroom for just a minute. Pleas return 10:30 tomorrow morning.

THE WITNESS: Yes, sir.

(Witness left the courtroom.)

THE COURT: I think I must really ask you again, Mr. Marks, you are wasting our time here.

Let me just point out to you that when Phillips acts through its duly authorized agents and they do something that is admissible or relevant to this case and it is already in evidence, if it be established that Mr. Conn sent a telegram to Mr. Parker and told W.W. Keller about it, it makes absolutely no difference to your client's posture in this case whether or not this chief operating officer for a time, who is now testifying, was told at that time by Mr. Keeler or not told by Mr. Keeler or not told by Mr. Conn.

It aids nothing. It is not even good advocacy to show this jury that he was something less than effective on keeping track of what his subordinates were doing. But that is up to you.

What I am jealous of is the time of this Court and jury and it makes no substantive difference at all in this case if an executive of Phillips did something that has a legal effect. Whether this man knew about it at the time or didn't know about it at the time is totally irrelevant to this trial.

MR. MARKS: But, your Honor, Conn, Parker and Keeler, all of whom were on the witness list that was

provided, and all who were going to be called, I learn now that none of them are going to be called.

THE COURT: Didn't you depose any of them?

MR. MARKS: Yes, we did.

THE COURT: Read their depositions if you like. but it is not relevant to this case whether or not he knew what they were doing.

The fact of what they are doing is amply shown by documents.

MR. MARKS: I will try to move it along, your Honor.

THE COURT: But it makes no difference, and I don't see how you gain any points with this jury by showing that the people who run large companies like Phillips have the same infirmities that all the rest of us have. They didn't know what was going on, some of the time, which the proper answer to is what difference does it make?

Please let's narrow it down. I would like you to finish this witness in 15 or 20 quick minutes tomorrow morning, and I just simply will not have this trial unduly prolonged. That goes for both sides.

We have got to get right to this, and it is not adding anything. So let's get right to what he knows,

what he did, what he saw, what he heard, and not how well he kept track of his subordinates.

All right.

I want you to bring enough witnesses tomorrow, Mr. MacCrate. I have got to move this trial along. I can't be confronted by some contention that the next witness is downtown in somebody's office, waiting to be called. I can't have it.

MacCRATE: That was ten minutes of one.

THE COURT: Even so, I was prepared to sit till 1.30 and I could have used the half hour. It would have given me more time for my 2 o'clock matter. You see, the jury has to have a full lunch hour. That doesn't necessarily apply for the rest of us.

MR. MARKS: To expedite things, may we have the production of the 1973 and '74 financials which we have requested on several occasions so we can have them available for these experts?

THE COURT: All right. Are they relevant to anything?

MR. MARKS: Yes, your Honor. They are directly relevant to the profits that the defendant earned.

We have already admitted the ones through 1972.

We want to bring it up to date.

MR. MacCRATE: Is this reopening a question that has already been determined?

MR. FARRELL: It has not been determined.

MR. MacCRATE: What is the request, then?

MR. FARRELL: We want the statements for 1973 and 1974.

MR. MacCRATE: It was previously determined, it is my recollection, that the production of statements would be limited to the year 1972.

MR. FARRELL: That was at pretrial, before the trial. It is quite obvious that Phillips' contention now, your Honor, will be that they are going to poor mouth about the quota ending in 1973.

I think we are entitled to rebut that, in any event.

Secondly, I think we are entitled to use the statements to cross-examine their experts or to cross-examine anyone who makes the contention that the fact that the quota is ended makes a great deal of difference in the profits they are earning.

THE COURT: That contention hasn't been made yet, but the problem which I am confronted with is twofold here:

If such a contention is made, then that is the time when these statements would become available for impeachment purposes.

Such a contention hasn't really been made yet. The other thing is that your damages and your rights and everything were all fixed on the morning you came in and filed your summons and complaint here, and this case theoretically should have been tried 20 days later, and I think to inject the area of hindsight on either side of this litgation simply because it has been so drawn out is unfortunate.

Now, we have allowed the first few years, probably in the nature of a compromise, but there comes a time when no one should profit by the extreme delay between the date of filing this lawsuit and the date it was tried.

MR. FARRELL: Your Honor, may I just say this? That cuts both ways.

THE COURT: It does, indeed, Mr. Farrell.

MR. FARRELL: If this case had been tried in 1968, then all of the projections that were made concerning the ten-year quota and all that would then have been true as far as we can see.

On the other hand, now that the quota is over,

the question arises whether or not the profits continue, and whether that has markedly changed the financial situation.

I don't think that we should be in the position of having our own expert have to cut down his prospects for the core facility because of the end of the quota system and then not have some information as to whether the end of the quota system really actually hurt Phillips that much.

I would also add that there cases that say we are entitled to show profits right up to the day of the trial, the Dwayne Jones case being one of them.

(Continued on next page.)

THE COURT: That is an equity action, isn't it?

MR. FARRELL: I don't think that was the reason for the ruling. I have my case here --

THE COURT: That is a very famous case and it has been a few months since I looked at it. Let's get back a moment.

Isn't it true after PRIDCO ceased to be a minority shareholder of this company that any profits or losses were affected in large measure by the fact that Phillips was buying and selling from itself?

MR. MARKS: It always did that.

THE COURT: But when they had PRIDCo as the one-quarter owner of the equity, they had somebody else in the situation which required them to deal fairly with the Puerto Rico Core. Once they owned it wholly, it really didn't matter how they handled their intercompany charges, it was a wholly-owned subsidiary and it was immaterial what they charged or what management they furnished or what went on or what book items appeared.

I can see if an expert starts testifying he might open the door to the use of these documents for impeachment purposes.

As far as opening the main case I'm not very favorably inclined.

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MR. FARRELL: I didn't want to reopen the main case, I want them for cross-examination and rebuttal if necessary.

THE COURT: I don't think I would take them for rebuttal but probably there is a good basis to produce them for cross-examination.

We might save time if they were produced in advance.

Don't these have to go to the Commonwealth anyway? Aren't they a public record?

MR. MacCRATE: I can't respond on that, your Honor.

THE COURT: I'm not talking about taxes.

MR. MARKS: But their financials are available for payment of taxes.

THE COURT: Taxes are generally confidential. I am thinking in terms of the ten-year contract read in evidence in which Phillips was required to reinvest its profits and for this reason I would assume they had to give the financials to the Commonwealth but not for taxes but to perform their contract.

MR. MacCRATE: To the extent to which there was an enormous investment in fibers, that took care of that obligation, I can't state to your Honor exactly what

impact that had as to any reporting requirement.

THE COURT: It would seem obvious to me they would still insist on their reporting even if they knew the bottom line was going to be zero.

MR. MacCRATE: Your Honor, so far as actual experience, any time after 1970 when the PRIDCO interest was sold, as your Honor pointed out, is completely affected by an entirely new relationship between parent and subsidiary.

THE COURT: I could see that an expert might open the door to these documents for cross-examination purposes. If we ever get to the day when we get to the expert.

MR. MacCRATE: The only reference to these matters up to this time has been by plaintiff's own expert and plaintiff's experts for valuing as of 1968. This was their testimony and what happens later on as the Court compromised it to an earlier date over our objection, nothing that happened after January of 1968 was relevant.

THE COURT: Let us go off the record.

(Discussion off the record.)

THE COURT: Gentlemen, I will direct the 1973 and 1974 financial statements of Phillips Company Limited of Puerto Rico shall be produced by defendant and marked

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for identification and may be examined under the protective order previously had in this litigation by plaintiff's counsel.

Whether or not these can be used for purposes of impeachment in the cross-examination of any expert called by defendant is something which the Court will resolve at a later date and until such a resolution favorable to plaintiff, they are absolutely not to be used in any way in this litigation and particularly their contents or the existence of them is not to be mentioned directly or indirectly or in any way whatsoevef in front of the jury.

Is that acceptable to all of you?

MR. FARRELL: Yes.

MR. MacCRATE: Yes.

THE COURT: Now, let us talk some more about Mr. Chapman.

Do you want to discuss that off the record?

(Discussion off the record.)

THE COURT: Gentlemen, I will discuss the Chapman matter with you further tomorrow and I would request you do remind me of it.

MR. MacCRATE: I will do that, your Honor.

THE COURT: All right, gentlemen.

(Adjourned to Tuesday, January 20, 1976, at 10.30 o'clock a.m.)